629.

SUPREME COURT OF THE UNITED STATES.

No. 57.

JOHN CONARD, (U. S.) PLAINTIFF IN ERROR,

VERSUS

THE PACIFIC INSURANCE COMPANY OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF PENNSYLVANIA.

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UNITED STATES, DISRTICT OF PENNSYLVANIA, sct.

To the Pacific Insurance Company of New York, citizens of the State of New York.

Whereas by a writ of error issuing out of the Supreme Court of the United States, directed to the judges of the circuit court of the United States, holden in and for the district of Pennsylvania, in the third circuit, wherein John Conard, a citizen of the State of Pennsylvania, is the complainant, the said judges are directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the Chief Justice and associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government, in which suit, you, the said Pacific Insurance Company of New York, were original plaintiffs, and John Conard, defendant, in a plea of trespass, vi et armis de bonis asportatis; that the record and process aforesaid, being inspected, they, the said Supreme Court, may cause to be done thereupon what of right ought to be done; and the said John Conard, having made an assignment of errors, and given good and sufficient security that the plaintiff in error shall well and truly prosecute his said writ of error to effect, and answer all such costs, as upon an affirmance of the judgment of the said circuit court may be adjudged to the respondent in error, you are hereby cited to appear (if you see cause) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error assigned by the said John Conard, complainant.

Given under my hand and seal this twenty-eighth day of December, one thousand eight hundred and thirty.

JOS. HOPKINSON.

I accept service. 28th December, 1830.

JOHN SERGEANT,
J. R. INGERSOLL,
For the Pacific Insurance Company.

UNITED STATES, sct.

The President of the United States to the judges of the circuit court of the United States, holden in and for the district of Pennsylvania, in the third circuit, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between the Pacific Insurance Company of New York, citizens of the State of New York, plaintiffs, and John Conard, a citizen of the State of Pennsylvania, defendant, in a plea of

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trespass, vi et armis de bonis asportatis, a manifest error hath intervened, to the great damage of the said John Conard, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government, that the record and process aforesaid, being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable John Marshall, Chief Justice of the Supreme Court of the United States, at Washington aforesaid, this day of in the year of our Lord one thousand eight hundred and and of the independence of the United States the

D. CALDWELL, *Clerk C. C.*

Allowed by
Jos. HOPKINSON.

Pleas before the honorable the judges of the circuit court of the United States in and for the district of Pennsylvania, in the third circuit, at Philadelphia, of October session, in the year of our Lord one thousand eight hundred and twenty-eight.

IT IS THUS CONTAINED:

John Conard, late of the eastern district of Pennsylvania, gentleman, a citizen of the State of Pennsylvania, was attached to answer the Pacific Insurance Company of New York, citizens of the State of New York, of a plea, wherefore, with force and arms, the goods and chattels of the said the Pacific Insurance Company in the district aforesaid, found he, the said John Conard, took and carried away, and other wrongs to the said the Pacific Insurance Company did, to the great damage of the said the Pacific Insurance Company, and against the peace and dignity of the United States.

And thereupon the said plaintiffs, by J. R. Ingersoll, their attorney, complain for that the said John Conard, on the sixteenth day of March, in the year of our Lord one thousand eight hundred and twenty-six, at the district aforesaid, with force and arms, seized, took, and carried away one hundred and eighty-two chests of young hyson tea of the value of seven thousand five hundred and ninety-seven dollars and three cents, ninety chests of young hyson tea of the value of three thousand nine hundred and five dollars and fifty-two cents, one hundred and thirty-one chests of young hyson tea of the value of five thousand five hundred and six dollars and sixty-six cents, two hundred and fifteen chests of young hyson tea of the value of nine thousand two hundred and ninety-nine dollars and sixty-seven cents, one hundred and five chests of hyson tea of the value of three thousand seven hundred and ninety-eight dollars and ninety-nine cents, two hundred and fifty-one chests of young hyson tea of the value of ten thousand two hundred and fifty-one dollars and thirty-nine cents, two hundred and ninety-seven chests of young hyson tea of the value of twelve thousand three hundred and twenty-eight dollars and sixty-three cents, one hundred and forty-two chests of young hyson tea of the value of five thousand four hundred

and thirty-five dollars and twenty-two cents, one hundred and three chests of hyson skin tea of the value of one thousand eight hundred and thirty-three dollars and thirty-seven cents, twenty thirteen-pound boxes of young hyson tea of the value of one hundred and thirty-two dollars and sixty-cents; altogether of the value of sixty thousand and eighty-nine dollars and eight cents, of the said the Pacific Insurance Conpany, there then being found and converted, and disposed of the same to his own use, and other wrongs to the said the Pacific Insurance Company then and there did, to the great damage of the said the Pacific Insurance Company, and against the peace and dignity of the United States of America; wherefore the said the Pacific Insurance Company say that they are injured, and have sustained damage to the amount of one hundred and twenty thousand dollars; and therefore they bring then suit, and so forth.

And the said defendant, by George Miffin Dallas, his attorney, comes and defends the force and injury, when, &c., and says, that he is not guilty of the said supposed trespass, above laid to his charge, or any part thereof, in manner and form as the said plaintiffs complain against him, and of this he puts himself upon the country; and for a further plea in this behalf, the said defendant, by leave of the court here, for this purpose had and obtained according to the form of the statute in such case provided, says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because, he says, that after the committing of the said trespasses and other wrongs, and before this suit, to wit, on the first day of May, in the year one thousand eight hundred and twenty-eight, at the district of Pennsylvania, the said plaintiffs received the sum of forty thousand dollars, then and there paid for the said defendant to the said plaintiffs, for and in full satisfaction and discharge of the said trespasses and other wrongs, which the said defendant is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their said action thereof against him.

And for a further plea in this behalf, the said defendant, by leave of the court, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because, he says, that the said plaintiffs, at the April sessions, one thousand eight hundred and twenty-six, of and in this court impleaded this defendant in a certain plea of trespass to the said plaintiffs damage forty thousand dollars, for the identical trespasses and other wrongs in the present declaration mentioned, and such proceedings were thereupon had in this court on that plea; that afterwards, on the thirtieth day of April, in the year one thousand eight hundred and twenty-eight, the said plaintiffs, by the consideration and judgment of this court, recovered in the said plea against this defendant with six cents damage and costs, which they had sustained by the same identical trespasses and other wrongs in the present declaration mentioned, whereof this defendant was convicted, as by the record and proceedings thereof still remaining in this court, more fully and at large appear, which judgment still remains in full force and effect, not in the least reversed or made void; and the said defendant, in fact, says, that afterwards, to wit, on the thirtieth day of April, in the year of our Lord one thousand eight hundred and twenty-eight, at the district aforesaid, the sum of forty thousand dollars was paid to the said plaintiffs for the said defendant, in full satisfaction of the damages and costs recovered as aforesaid by the said plaintiffs, of and against the said defendant, and that the said plaintiffs received the said sum last mentioned

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in full satisfaction therefor; and that the said trespasses and other wrongs to the said plaintiffs, for which the said plaintiffs recovered and received satisfaction as aforesaid, are the same trespasses and other wrongs whereof the said plaintiffs complain now against the said defendant, and not other or different; and that the said the Pacific Insurance Company, by whom the said recovery was had against the said defendant, are the same the Pacific Insurance Company who now prosecute this suit, as aforesaid, against the said defendant, which he is ready to verify by the said record; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him.

[And for a further plea in this behalf, the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because, he says, that the said plaintiffs, at the April sessions, one thousand eight hundred and twenty-six, of and in this court, impleaded this defendant in a certain plea of trespass to the said plaintiffs damage forty thousand dollars, for the identical trespasses and other wrongs in the present declaration mentioned, and such proceedings were thereupon had in this court on that plea; that afterwards, to wit, on the thirtieth day of April, in the year one thousand eight hundred and twenty-eight, the said plaintiffs, by the consideration and judgment of this court, recovered in the said plea against this defendant with six cents damages and costs, which they had sustained by the same identical trespasses and other wrongs in the present declaration mentioned; whereof this defendant was convicted, as by the record and proceedings thereof still remaining in this court more fully and at large appear, which judgment still remains in full force and effect, not in the least reversed or made void; and the said defendant in fact, says, that afterwards, to wit, on the thirtieth day of April, in the year one thousand eight hundred and twenty-eight, at the district aforesaid, the sum of forty thousand dollars was paid to the said plaintiffs for the said defendant, in full satisfaction of the damages and costs recovered as aforesaid by the said plaintiffs of and against the said defendant, and that the said plaintiffs received the said sum last mentioned in full satisfaction therefor; and that the said trespasses and other wrongs to the said plaintiffs, for which the said plaintiffs recovered and received satisfaction as aforesaid, are the same trespasses and other wrongs to the said plaintiffs whereof the said plaintiffs complain now against the said defendant, and not other or different, and that the said the Pacific Insurance Company, by whom the said recovery was had against the said defendant, are the same the Pacific Insurance Company who now prosecute this suit as aforesaid against the said defendant, which he is ready to verify; wherefore, he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him.]

And the said plaintiffs, as to the plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country, do the like; and the said plaintiffs, as to the said plea of the said defendant by him secondly above pleaded, say that the said plaintiffs, by reason of any thing by him in that plea alleged, ought not to be barred from having and maintaining their aforesaid action against him, because they say that they did not receive the sum of forty thousand dollars, in the said plea mentioned, for and in full satisfaction and discharge of the said trespasses and other wrongs in the said declaration mentioned, in manner and form as the said defendant

hath above in his said plea in that behalf alleged, and this the said plaintiffs pray may be inquired of by the country, &c. And the said plaintiffs, as to the said pleas of the said defendant, by him thirdly and fourthly above pleaded, say, that the said plaintiffs, by reason of any thing by him in those pleas respectively alleged, ought not to be barred from having and maintaining their aforesaid action thereof against him, because they say that, heretofore, to wit, on the ninth day of October, one thousand eight hundred and twenty-six, at the district aforesaid, a certain bond was executed by the said plaintiffs, and by them delivered to and accepted by the United States of America, in the following words:

Know all men by these presents, that we, the Pacific Insurance Company of New York, are held and firmly bound unto the United States of America in the sum of sixty thousand dollars, lawful money of the United States of America, to be paid to the said the United States of America, their certain attorney, successors, or assigns, to which payment, well and truly to be made and done, we do bind ourselves and our successors firmly by these presents. Sealed with our seal of incorporation, and dated this ninth day of October, in the year of our Lord one thousand eight hundred and twenty-six.

Whereas the goods and merchandise described in an invoice, a copy whereof is annexed, imported from Canton in the ship Addison, safely arrived at the port of Philadelphia, have been levied on by the marshal of the eastern district of Pennsylvania, by virtue of an execution on a judgment in favor of the United States against Edward Thompson, of Philadelphia, as the property of the said Edward Thompson; and whereas, the Pacific Insurance Company of New York claim to be the owners in law or equity of the said goods, and actually hold the bill of lading and invoice thereof under which the said goods have been duly entered at the custom-house and the duties thereon secured, to be paid according to law; and whereas it has been agreed by and between the Secretary of the Treasury, in behalf of the United States, and the said Pacific Insurance Company, that a suit shall be instituted by the said named company against the said marshal, in which the sole question to be tried and decided shall be, whether the United States or the said Pacific Insurance Company are entitled to the said goods and the proceeds thereof; and whereas it has been further agreed that the said goods shall be delivered to the said Pacific Insurance Company, without prejudice to the rights of the United States, under the said executions or otherwise, and that they shall sell and dispose of the same in the best manner and for the best price they can obtain therefor, and for cash or upon credit as they may judge expedient; and that the moneys arising from the sales thereof, deducting the duties and all customary charges and commissions on such sales, shall be deposited by the said Pacific Insurance Company, as soon as received from and after the sale, in the bank of the United States, to the credit of the President of the said bank in trust, to be invested in the stocks of the United States, in the name of the said President in trust, so to remain until it shall be judicially and finally decided to whom the said goods, or the proceeds thereof, do of right and according to law belong, and on the further trust, that whenever such decision shall be made, the said President of the said bank shall deliver the said moneys or transfer the said stocks to the party in whose favor such decision shall be made; and whereas, in pursuance of the said agreement, the said goods have this day been delivered to the said Pacific Insurance Company, for the purposes aforesaid, it being understood and agreed that such delivery of the goods shall not prejudice any existing right of the said company.

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Now the condition of this obligation is such, that if the said Pacific Insurance Company shall comply with the said arrangements, and well and truly sell and dispose of the said goods, and cause the moneys arising from the sale thereof, after deducting therefrom the duties, charges, and commissions, as aforesaid, to be deposited in the bank of the United States to the credit of the President of the said bank in trust, according to the true intent and meaning of the above recited agreement, and for the purposes therein set forth, this obligation to be void, but otherwise to be and remain in full force and virtue.

The Pacific Insurance Company of New York, by
JON. W. LAWRENCE, *Pres't.* [L. S.]

Signed and sealed in the presence
WM. COVENTRY H. WADDELL,
JAMES CORKREY.

Invoice of merchandise shipped by Rodney Fisher, attorney, for John R. Thompson, on board the American ship Addison, A. Hedelius, master, bound for Philadelphia, for account and risk of Edward Thompson, Esquire, a native citizen of the United States of America, residing there, and consigned to order:

Marks.	Nos.	Description.	Nett pounds.	P. C.	Price.	T. M. C.	
E. T. Siqua Manhop "	7 a 8 10 a 13 14 a 19 34 a 36	251 chests young hyson tea	22,367	167 75	44	7381 0 0	$10,251 59
		297 " "	25,729	192 97	46	8876 6 2	12,528 63
		142 " "	11,858	88 94	44	3913 3 6	5,435 22
		103 hyson skin tea	6,653	48 89	27	1320 0 3	1,833 37
		20 13lb. boxes young hyson, at $6 63 per box				- -	132 60
		E. E.					$29,981 21

CANTON, *November* 22, 1825.

RODNEY FISHER,
Attorney for J. R. Thompson.

And also, heretofore, to wit, on the same day and year aforesaid, at the district aforesaid, a certain other bond was executed by the said plaintiffs, and by them delivered to and accepted by the United States of America, in the following words:

Know all men by these presents, that we, the Pacific Insurance Company of New York, are held and firmly bound unto the United States of America in the sum of sixty thousand dollars, lawful money of the United States of America, to be paid to the said the United States of America, their certain attorney, successors, or assigns, to which payment, well and truly to be made and done, we do bind ourselves and our successors, firmly by these presents. Sealed with our seal of incorporation, and dated this ninth day of October, in the year of our Lord one thousand eight hundred and twenty-six.

Whereas the goods and merchandise described in an invoice, a copy whereof is annexed, imported from Canton in the ship Superior, safely arrived at the port of Philadelphia, have been levied on by the marshal of the eastern

district of Pennsylvania, by virtue of an execution on a judgment in favor of the United States against Edward Thompson, of Philadelphia, as the property of the said Edward Thompson; and whereas the Pacific Insurance Company of New York claim to be the owners in law or equity of the said goods, and actually hold the bill of lading and invoice thereof under which the said goods have been duly entered at the custom-house, and the duties thereon secured, to be paid according to law; and whereas it has been agreed by and between the Secretary of the Treasury, in behalf of the United States, and the said Pacific Insurance Company, that a suit shall be instituted by the said named company against the said marshal, in which the sole question to be tried and decided shall be, whether the United States or the said Pacific Insurance Company are entitled to the said goods and the proceeds thereof; and whereas it has been further agreed, that the said goods shall be delivered to the said Pacific Insurance Company, without prejudice to the rights of the United States, under the said executions or otherwise, and that they shall sell and dispose of the same in the best manner and for the best price they can obtain therefor, and for cash or upon credit as they may judge expedient; and that the moneys arising from the sale thereof, deducting the duties and all customary charges and commissions on such sales, shall be deposited by the said Pacific Insurance Company, as soon as received from and after the sale, in the bank of the United States, to the credit of the President of the said bank in trust, to be invested by the said President of the said bank, in the stocks of the United States in the name of the said President in trust, so to remain until it shall be judicially and finally decided to whom the said goods, or the proceeds thereof, do of right and according to law belong, and on the further trust, that whenever such decision shall be made, the said President of the said bank shall deliver the said moneys or transfer the said stock to the party in whose favor such decision shall be made; and whereas, in pursuance of the said agreement, the said goods have this day been delivered to the said Pacific Insurance Company for the purposes aforesaid, it being understood and agreed that such delivery of the goods shall not prejudice any existing right of the said company.

Now the condition of this obligation is such, that if the said Pacific Insurance Company shall comply with the said arrangement, and well and truly sell and dispose of the said goods, and cause the moneys arising from the sale thereof, after deducting therefrom the duties, charges, and commissions, as aforesaid, to be deposited in the bank of the United States, to the credit of the President of the said bank in trust, according to the true intent and meaning of the above recited agreement, and for the purposes therein set forth, this obligation to be void, but otherwise to be and remain in full force and virtue.

The Pacific Insurance Company of New York, by
JON. W. LAWRENCE, *Pres't.* [L. S.]

Signed and sealed in presence of
WM. COVENTRY H. WADDELL,
JAMES CORKREY.

633.

Invoice of merchandise shipped by Rodney Fisher, attorney for John R. Thompson, on board of the American ship Superior, John Phillips, master, bound for Philadelphia, for account and risk of Edward Thompson, Esq., a native citizen of the United States of America, residing there, and consigned to order:

Marks.	Nos.	Description.	Nett pounds.	P. C.	Prices.	T. M. C.	Dols. cts.
E. T.							
Houqua	1 a 5	182 ch. young hyson	15,855	118 91	46	5469 8 6	$7,597 03
Morqua	22 a 24	90 " "	8,151	61 13	48	2811 9 8	3,905 52
"	43 a 45	131 " "	11,013	82 60	48	3964 8 0	5,506 66
Hipshong	18 a 21	215 " "	19,405	145 54	44	6695 7 6	9,299 67
Houqua	A.	105 hyson - -	6,877	51 57	51	2630 0 7	3,798 99
		E. E.					$30,107 87

CANTON, *December* 9, 1825.

RODNEY FISHER,
Attorney for J. R. Thompson.

And the said plaintiffs do further say, that afterwards, to wit, the day and year aforesaid, at the district aforesaid, the said John Conard did then and there agree to and with the said plaintiffs, that a suit should be instituted by the plaintiffs, in their name as plaintiffs, against him, the said John Conard, marshal as aforesaid, in which the sole question to be tried and decided should be, whether the United States or the said plaintiffs were entitled to said goods and the proceeds thereof.

And the said plaintiffs do further say, that afterwards, to wit, at the April sessions of this court, in the year one thousand eight hundred and twenty-six, in conformity with the said bond and with the said agreement, a suit was instituted by the said plaintiffs, in their name as plaintiffs, against the said John Conard, marshal of the eastern district of Pennsylvania, for the trial and decision of the said question only, and for no other purpose whatever; and in which suit the sole question tried and decided was, whether the United States or the said plaintiffs were entitled to said goods and the proceeds thereof.

And the said plaintiffs do further say, that all the pleadings and proceedings in the said suit were subject to the said agreement, and were governed and controlled thereby; and that, in fact and in truth, the said plaintiffs did not, on the trial of the said suit, claim to recover, and did not offer any evidence for the purpose of recovering, any damages whatever from the said John Conard, marshal, and that no damages whatever were recovered in the said court, except six cents.

And the said plaintiffs do further say, that in the said suit it was judicially and finally decided that the said goods, and the proceeds thereof, did of right and according to law belong to the said plaintiffs, and a verdict and judgment for nominal damages were rendered; and the said plaintiffs did not receive or claim therein or thereby any other or further damages, or any damages whatever, for the said trespass and other wrongs.

And the said plaintiffs do further say, that the said suit here mentioned, and the plea in the said defendants plea mentioned and referred to, are the same plea or suit, and not other or different pleas or suits than in the said plea mentioned; and this they are ready to verify. Wherefore they pray

judgment and their damages by them sustained by reason of the committing of the said trespasses, to be adjudged to them, and so forth.

And the said defendant, as to the said replication of the said plaintiffs to the said second plea of him, the said defendant, and which the said plaintiffs have prayed may be enquired of by the country, doth the like.

And the said defendant, as to the said replication of the said plaintiffs to the said third and fourth pleas of him, the said defendant, saith that the same and the matters therein contained in manner and form, as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against him, the said defendant: and that he, the said defendant, is not bound by the law of the land to answer the same, and this, he, the said defendant, is ready to verify. Wherefore for want of sufficient replication in this behalf, he, the said defendant, prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, and so forth.

And the said plaintiffs, for that they have above, in replying to the said third and fourth pleas of the said defendant, alledged sufficient matter in law to have and maintain their action aforesaid against the said defendant, which they are ready to verify. Which said matter the said defendant doth not deny nor thereunto in any wise answer, but the said averment wholly refuses to admit, pray judgment and their damages by reason of the said trespass to be adjudged to them, &c.

Whereupon it appearing to the court now here, that the said third and fourth pleas of the said defendant, in manner and form aforesaid, pleaded, and the matters therein contained, are not sufficient in law to preclude the said plaintiffs from having and maintaining their said action against the said defendant.

Therefore it is considered by the court here, that the said plaintiffs ought to recover their damages, by reason of the premises, against the said defendant.

Therefore let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the eleventh day of April next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; the same day is there given to the parties aforesaid, then and there, &c.

On which said eleventh day of April, one thousand eight hundred and twenty-nine, come the parties aforesaid, by their attorneys aforesaid, and further day is given to the parties aforesaid, until the twelfth day of October next.

Therefore, as before, let a jury thereupon come, on the said twelfth day of October next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; the same day is given to the parties aforesaid, then and there, &c.

On which said twelfth day of October, one thousand eight hundred and twenty-nine, come the parties aforesaid, by their attorneys aforesaid, and further day is given to the parties aforesaid, until the eleventh day of April next.

Therefore, as before, let a jury thereupon come on the said eleventh day of April next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; the same day is given to the parties aforesaid, then and there, &c.

On which said eleventh day of April, one thousand eight hundred and thirty, come the parties aforesaid, by their attorneys aforesaid.

And afterwards, in this same session, to wit, on the twenty-second day of May, one thousand eight hundred and thirty, a jury being called, come, to

wit, Henry J. Boller, Cornelius Comegys, Isaac C. Elfreth, Samuel Hazlehurst, Samuel N. Lewis, Jonathan Miller, James McAlpin, William Newbold, Samuel W. Paul, Sansom Perot, Charles A. Poulson, Lewis Ryan, who being duly empannelled, returned, tried, and sworn or affirmed, upon their oaths and affirmations, respectively do say, that the said John Conard is guilty of the trespass upon him charged as above, in manner and form as the said "the Pacific Insurance Company of New York" above against him complains; and they assess the damages of them, the said the Pacific Insurance Company of New York, by occasion of the premises, to the sum of forty-two thousand five hundred and ninety-one dollars and fifty-eight cents, with six cents costs.

Therefore, it is considered by the court here, that the said "the Pacific Insurance Company of New York" recover against the said John Conard, the said sum of forty-two thousand five hundred and ninety-one dollars and fifty-eight cents, their damages aforesaid, by the jury aforesaid, in form aforesaid assessed, as also the sum of thirty-three dollars and twenty-three cents for their costs and charges by them about their suit in this behalf expended, &c.

UNITED STATES, DISTRICT OF PENNSYLVANIA, set.

I certify the foregoing to be a true and faithful copy of the record of the judgment of the circuit court of the United States in and for the district of Pennsylvania, in the third circuit, in a certain action of trespass, vi et armis de bonis asportatis, therein lately depending between the Pacific Insurance Company of New York, plaintiffs, and John Conard, defendant.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at Philadelphia, this eighteenth day of December, A. D. 1830, and in the fifty-fifth year of the independence of the said United States.

D. CALDWELL, *Clerk C. C.* [L. S.]

Be it remembered, that, in the term of October, in the year of our Lord one thousand eight hundred and twenty-eight, came the Pacific Insurance Company of New York, citizens of the State of New York, into the circuit court of the United States, holden in and for the eastern district of Pennsylvania, and impleaded John Conard in a certain plea of trespass, in which the said the Pacific Insurance Company declared, (prout the narr:,) and the said John Conard pleaded, (prout the pleat.,) and thereupon issue was joined between them.

And afterwards, to wit, at a session of the said court, held at the city of Philadelphia, in the eastern district aforesaid, before the honorable Henry Baldwin, an associate justice of the Supreme Court of the United States and judge of the said circuit court, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and thirty, the aforesaid issue between the said parties came to be tried by a jury of the said eastern district of Pennsylvania, for that purpose duly empannelled (prout the list of jurors;) at which day came as well the said plaintiffs as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid, empannelled to try the said issues, being also called, came and were then and there in due manner chosen, and sworn or affirmed, to try the said issues, and upon the trial the counsel of the said defendant gave in evidence:

First. The deposition of *William C. H. Waddell,* (prout the same, contained in the commission issued to New York, a copy of which, entire, is hereto annexed.)

Second. The account sales and account current of *John Hone & Sons*, of New York, (prout the same, contained in said commission to New York, numbered 54 and 55.)

Third. The deposition of *Philip Thomas*, (prout the same, contained in said commission.)

Fourth. The deposition of *Isaac S. Hone*, (prout the same, also contained in the said commission;) and the exhibits therein referred to, (prout the same.)

Fifth. A respondentia bond, executed to plaintiffs by Edward Thompson, Edward H. Nicoll, Francis H. Nicoll, and Floyd S. Bailey, dated the 12th June, 1825, with the bill of lading thereto attached, and assignment, (prout the same, a copy of which is hereto annexed.)

Sixth. A respondentia bond, executed to plaintiffs by Edward Thompson, Edward H. Nicoll, Francis H. Nicoll, and Floyd S. Bailey, dated the 11th of July, 1825, with the bill of lading thereto attached, and assignment, (prout the same, a copy of which is annexed.)

Seventh. A bond executed by plaintiffs *to the United States*, on the *9th of October*, 1826, with the bill of lading and invoice of a shipment on board the *Addison*, thereto attached, (prout the same, a copy whereof is annexed.)

Eighth. A similar bond, executed by plaintiffs to United States, on same date, with the bill of lading and invoice of a shipment on board the *Superior*, thereto attached, (prout the same, a copy whereof is annexed.)

Ninth. The charter incorporating the plaintiffs, dated the 14th April, 1815.

And the said counsel for the said plaintiffs, in further support of the issues on their part, then and there called, as a witness, *Rodney Fisher*, who being duly sworn, said, that the invoices attached to the bonds executed by the plaintiffs to the United States, on the 9th of October, 1826, were the return invoices of the bills of lading attached to the respondentia bonds, given to plaintiffs by Edward Thompson, Edward H. Nicoll, Francis H. Nicoll, and Floyd S. Bailey, dated, respectively, the 10th of June and 11th of July, 1825.

And also, *James Clinch*, who being duly sworn, said, that the calculation of the average prices of the teas of the cargoes by the ships the Maria, the Washington, and the America, sold in New York, in the spring of 1826, I believe to be perfectly accurate; I went through all the particulars myself and compared them with the sales, (prout said calculation of averages.)

And the said counsel for the said plaintiffs, further in support of the issues on their part, gave in evidence the writ of fieri facias at the suit of the United States against Edward Thompson, under which, by endorsement thereon, it appeared that the defendant levied upon the cargoes of the Addison and Superior, on the 16th of March, 1826.

And the said counsel for the said plaintiffs further offered to prove a demand of the collector, and refusal by him after the levy was made, to permit an entry and deliver the goods; but the counsel for the defendant objected to such proof, and the objection was overruled by the court, and the evidence given.

And the counsel for the said plaintiffs here rested their case.

Whereupon the counsel for the defendant then and there asked the court to charge the jury as set forth in the paper hereunto annexed, marked (A,) (prout the same;) but the court did then and there charge the jury as follows, to wit:

"In this case, there are two questions for your consideration:

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1. Whether the plaintiffs can sustain this action.
2. The amount of damages to which they are entitled.

The facts of the case are few. On the 10th and 11th of July, 1825, the plaintiffs advanced $60.000 to Edward Thompson, on his respondentia bonds; he shipped the money for Canton, took bills of lading deliverable to his factor, John R. Thomson, and assigned them to the plaintiffs. The money arrived safely and was invested in the teas now in controversy. The teas were shipped on board of the ships Addison and Superior, which arrived in the Delaware on the 15th March, 1826, when, with their cargoes, they were levied on by the defendant, by virtue of an execution at the suit of the United States against Edward Thompson. The teas in question were landed and deposited in the public stores, under the care of the custom-house officers, where they remained until the fall of 1826, when, by an agreement made between the plaintiffs and the Secretary of the Treasury, they were delivered to them and sold under their direction for their account.

Immediately on hearing of the levy, the plaintiffs, by their agent, offered to the collector to secure the duties, and demanded the teas. They were refused.

On this state of the facts, the counsel for the defendant contends that Edward Thompson remained the legal owner of the teas at the time of the levy; that the plaintiffs did not become the owners or consignees thereof, or the agents of Thompson, so as to authorize them to enter the teas at the custom-house according to the provisions of the 36th section of the revenue law, which he contends could only be made by Thompson himself; that he being indebted to the United States by bonds for duties unpaid, was, by the proviso of the 62d section of the law, prohibited from making an entry without the actual payment of the duties accruing, for which the United States had a lien until they were paid; and that, therefore, the plaintiffs not having offered to pay the duties on their demand of the teas from the collector, had no right to the possession of the goods, and cannot maintain this action.

Were this a question open for consideration, I should have no hesitation in saying that the whole transaction between Thompson and the plaintiffs made them the legal owners and consignees of the property purchased by the outward shipment, and that as such they had a right to enter the teas, on securing the duties, without being affected by the delinquency of Thompson at the custom-house, as much so as if the shipment had been made in their own name and on their own account.

But it has not been left for me to declare the law in this case; it has been definitively settled by the Supreme Court in the case of the Atlantic Insurance Company against Conard, decided at January term, 1828, and the case of Francis H. Nicoll against Conard, at the last term. The first of these cases was an action of trespass brought to try the right of property in the plaintiffs to teas shipped in the Addison and Superior, under circumstances in all respects agreeing with this case. The court decided that they were the owners, and entitled to the proceeds of what had been sold under the agreement; the court declaring the plaintiffs to be the owners and consignees by the agreement between them and Thompson, and the consequent acts. The second was a similar action brought for the same purpose, as well as the recovery of damages, for levying on certain goods and a quantity of teas shipped, and in all respects circumstanced like the present. The cause was tried before Judge Washington, in this place, and resulted in a verdict and judgment for the plaintiff, not only for the proceeds of the property which had been sold, but a large amount in damages. It was removed by

writ of error to the Supreme Court, and the judgment affirmed. The judge who delivered their opinion did not think proper to add to or alter any thing in the very able and excellent charge delivered to the jury by his lamented predecessor. The affirmance was in these words: That charge embraced every point material to the decision of this case, and connected with the opinion of the court in the former case, leaves for you and the court no other duty than acquiescence in the well established principles which control the cause before you.

The right of property in the teas which are the subject of this action, has already been settled by the judgment of this court in a former action between the same parties, and is conclusive on that point in this.

But the defendant's counsel contends that, in the case of Harris *vs.* Denny, decided at the last term of the Supreme Court, a principle has been settled which will prevent the plaintiffs recovering. The case was this: James D'Wolff, jun., was indebted to the United States on duty bonds unpaid; goods consigned to him arrived in the port of Boston, which were attached by his creditors in Massachusetts, by a writ in the hands of Denny, the sheriff. The marshal attached the same goods by process from the district court, at the suit of the United States; at the time of the attachment by Denny, the plaintiffs offered to secure the duties, and demanded possession, which the collector refused. On an action by the sheriff against the marshal, the court decided that he could not sustain it, because the plaintiffs in the attachment were neither owners, consignees, nor agents; that D'Wolff continued the owner, and being delinquent on former bonds, had no right to enter the goods till payment of the duties, and that the plaintiffs, claiming only as creditors, had no right to the possession on the mere offer to secure them. This case had no bearing on the right of an owner or consignee to enter goods on offering to secure duties accruing. It was there declared that the United States had no lien on the goods for the amount due by D'Wolff, on other importations. It only decided that a mere creditor could acquire no right to the possession of goods so imported, consigned to D'Wolff, until the duties were actually paid.

The authority of the two cases referred to does not seem to me to be at all shaken by that of Harris *vs.* Denny, and I am, therefore, clearly of opinion that the plaintiffs have well established their right to maintain the present action for the recovery of damages for the seizure of the goods in question.

It is next alleged that, by the agreement of the 9th of October, and the acts accompanying it, the defendant is released from all claim for damages. The decision of this and the Supreme Court, in the case of Nicoll *vs.* Conard, settles the reverse of this, and declares that damages may be recovered notwithstanding this agreement. In this case the defendant pleaded this agreement as a bar to this action; the court overruled the plea and rendered judgment for the plaintiffs, so that this question has already been settled as a matter of law, and is not open for your consideration as one of fact.

The counsel for the defendant next contends, that the rule of damages in this case is furnished by the balance due on the respondentia bonds, after deducting the amount of the sales. This ground is assumed by considering the plaintiffs as mere mortgagees of the teas, an idea wholly inadmissable after the two solemn decisions of the Supreme Court, each adjudging the legal right of property to be in the respective plaintiffs as owners, and one of them awarding damages without any reference to the amount due on the respondentia bonds. These decisions are binding authority on this court,

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which must be governed by them to their full extent. We are not at liberty to say that the plaintiffs in those actions were legal owners, only to the extent of the debt due them by Edward Thompson. The entire property in the teas was vested in them, and this court has passed the same judgment as to those now in controversy. This action of trespass would assume a singular aspect if the plaintiffs could not recover damages to the amount of their property which has been taken from them by the defendant. Edward Thompson had no legal property in these teas. Whether the plaintiffs can, in any event, be considered as trustees for him, his creditors or assignees, is not material to inquire in this action. On this question of damages, we cannot settle accounts between trustees and certui que trust, (if there can be such as to this property,) who are no parties to this suit. It is enough for the plaintiffs to exhibit record evidence of their being the acknowledged legal owners. It necessarily results from such ownership that they are legally entitled to all the damages arising from its seizure and detention. The right to damages must be commensurate with the right to property; to adopt any other rule would introduce endless confusion and mischief. The plaintiffs then are before you as the legal owners of the teas, and with no legal impediment in the way of their recovery.

The next question for your consideration is, the amount of damages which the plaintiffs are entitled to recover as the legal owners of the teas.

The rule which ought to govern juries, in assessing damages for injuries to personal property, depends much on the circumstances of the case. Where a trespass is committed in a wanton, rude, and aggravated manner, indicating malice or a desire to injure, a jury ought to be liberal in compensating the party injured in all he has lost in property, in expenses for the assertion of his right, in feeling or reputation, and even this may be exceeded by setting a public example to prevent a repetition of the act. In such cases there is no certain fixed standard, for a jury may properly take into view, not only what is due to the party complaining, but to the public, by inflicting what are called in law speculative, exemplary, or vindictive damages. But where an individual, acting in pursuance of what he conceives a just claim to property, proceeds by legal process to enforce it, and causes a levy to be made on what is claimed by another, without abusing or perverting its true object, there is and ought to be a very different rule, if, after a due course of legal investigation, his case is not well founded. This is what must necessarily happen in all judicial proceedings, fairly and properly conducted, which are instituted to try contested rights to property. If the plaintiff, in an action of trespass, succeeds, he is entitled to legal satisfaction for the injury sustained by the taking and detention in cases not attended with the circumstances of aggravation before mentioned. The general rule of damages is the value of the property taken, with interest, from the time of the taking down to the trial. This is generally considered as the extent of the damage sustained, and this is deemed legal compensation, which refers solely to the injury done to the property taken, and not to any collateral or consequential damages resulting to the owner by the trespass. These are taken into consideration only in a case more or less aggravated. But where the party taking the property of another by legal process, acts in the fair pursuit of his supposed legal right, the only reparation he is bound to make to the party who turns out ultimately to be injured, is to place him, as to the property, in the same situation in which he was before the legal trespass was committed. The costs of the action are the only penalty imposed by the

law, which limits and regulates the items and amount. In the present case, the defendant acted under the orders of the Government in execution of his duties as a public officer; he made the levy, but committed no act beyond the strictest line of his duty, which placed him in a situation where he had no discretion. The result has been unfortunate for him; he has taken the property of the plaintiffs for the debt of Edward Thompson, and must make them compensation for the injury they have sustained thereby, but no further.

It has long since been well settled, that a jury ought, in no case, to find exemplary damages against a public officer, acting in obedience to orders from the Government, without any circumstance of aggravation, if he violates the law in making a seizure of property. In the case of Nicoll against the present defendant, Judge Washington instructed the jury that they might give the plaintiff such damages as he has proved himself to be justly entitled to, on account of any actual injury he had proved to their satisfaction he had sustained by the seizure and detention of the property levied on, but that they ought not to give vindictive, imaginary, or speculative damages. The affirmance of his charge makes it the guide for us in this case. Our true inquiry then must be, what damages have the plaintiffs so proved themselves to be entitled to?

There can be no doubt that they have a right to the value of the teas, at the time of the levy, with interest from the expiration of the usual credit on extensive sales. You may ascertain the value from the sales made at New York or this place, in the spring of 1826; if, in your opinion, they afford evidence of their real value, or, if you are satisfied from the evidence you have heard, that the seizure and storing of these teas had the effect of depressing the prices, you may make such addition to the prices at which sales were actually made as would make them equal to what they would have been had they come to the possession of the plaintiffs at the time of the levy. But you may, perhaps, think that, under all the circumstances of his case, it could not be proper to affix a valuation beyond the sales of other teas of a quality similar to those in controversy, and that they afford a fair test of what the plaintiffs would have received had they remained at their disposal, which will afford a correct mode of ascertaining their actual value. This, however, is a matter exclusively for your consideration; you will judge of their value from all the evidence.

Thus far, the case is attended with no difficulty; but it is not so easy to decide on the other items for which the plaintiffs claim an allowance in damages.

In marine trespasses, the Supreme Court have at different times laid down the following, as the rule of damages in cases unaccompanied with aggravation.

In 2 Cranch, 124, 56, the actual prime cost of the cargo, interest, insurance, and expenses, necessarily sustained by bringing the vessel into the United States.

In 3 Dahat, 334, the full value of the property injured or destroyed; counsel fees rejected as an item of damage.

In 2 Wheaton, 335, the prime cost of the cargo, all charges, insurance, and interest.

In 3 Wheaton, 560, the prime cost or value of the property at the time of loss or the diminution of its value by the injury and interest.

In 1 Gallison, 315, the prime cost and interest.

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In 9 Wheaton, 376, 7, the case of the Apollo, where the vessel and cargo are lost or destroyed, their actual value, with interest, from the trespass. The same rule also as to a partial injury. When property has been restored, demurrage for the vessel, and interest. Where it has been sold, the gross amount of sales and interest, with an addition of 10 per cent., when the sale was under disadvantageous circumstances or the property had not arrived at its place of destination.

In 3 Wheaton, 559, a loss by deterioration of the cargo, not occasioned by the improper conduct of the captors, is not allowed. Probable or possible profits on the voyage, either on the ship or cargo, have in every instance been rejected. 9 Wheaton, 376, 7; 3 Wheaton, 502.

In none of these cases do the court recognize an allowance for such claims as are now set up by the plaintiffs, but they all seem to concur in adopting a rule which excludes them. No good reason seems to be presented for a distinction between the compensation due to a party injured by a marine trespass and one committed on land; neither do the judges, in delivering the opinion of the court, refer to such distinction as one existing. In the case of the Apollo, Judge Story observes, such it is believed have been the rules generally adopted in practice, in cases which did not call for vindictive or aggravated damages. And it may be truly said, if these rules do not furnish a complete indemnification in all cases, they have so much certainty in their application, and such a tendency to suppress expensive litigation, that they are entitled to some commendation on principles of public policy, 9 Wheat. 379; and in almost all cases will give a fair and just recompense. 3 Wheat. 561.

In 3 Wheat. 558, the court, in assigning their reasons for giving other damages in the case then before them, remark, that it was one of gross and wanton outrage, without any just excuse, and that, under such circumstances, the honor of the country and the duty of the court equally require that a just compensation should be made to the unoffending neutral for all the injuries and losses actually sustained by him. The respondents, in that case, were the owners of a privateer, who were, by policy, held responsible for the conduct of the officers and men employed by them, but not to the extent of vindictive damages. This seems to afford a practical definition of injuries and losses actually sustained, and the class of cases where compensation is allowed for them, which seem to be midway between those attended with no aggravation and those which justify vindictive damages.

If the present were a case of marine trespass, I think there is no doubt that the damages could not exceed the value of the teas and interest, if they had not been restored, or, as the result has been a restoration, the injury done by the seizure, which would be the loss in the sales, in the fall in the market, and interest for the detention, for there exists none of the matters of aggravation which have induced courts of admiralty to go further.

It is in their sound discretion to allow or refuse counsel fees, according to the nature of the case, either as damages or a part of the costs, as in the case of the Apollo; but by a late case, they were allowed as costs in a case where it was adjudged by the Supreme Court that no damages could be claimed. They form an item of costs in such courts, but not in courts of common law. It would be legislation by the common law courts to order them to be taxed as costs. The expenses of prosecuting claims of this description do not come within the principles established by the courts in causes of admiralty

jurisdiction, but seem to be considered as extra damages, beyond the value and interest, where there is aggravation, but not otherwise.

I think it a safe rule in common law actions of trespass, and can perceive no sound reason for holding a marshal to a harder rule of damage than a naval or revenue officer, or the owner of a privateer. The same principle ought to govern all alike, or, if any discrimination prevails, it should be in favor of the defendant, who could use no discretion, but was bound to do the act which has exposed him to this action.

The case of Woodham *vs.* Gelston seems to me to be based on this rule, and the damages recovered in that case were only such as related to the property. The marshal's fees were for seizing and keeping possession of the vessel; on the restoration to the plaintiff he paid them; they were a charge on the property in the nature of storage or bailment. In sanctioning this item, the court seem to put it on the ground of its being a charge on the defendant, and having been paid by plaintiff, he was entitled to recover it back; but they say, if it had been a mere voluntary payment a deduction would have been proper. The other items were for wharfage and ship-keeping, which were disallowed, because they were after the restoration. These were all the claims for expenses presented in that case, and they all attached to the property taken; none related to personal expenses in prosecuting the suit.

In declaring that voluntary payments shall be deducted, the court settle the principle as to the right to charge for the marshal's fees. They held the jury to strict rules, for they struck out an item of compound interest allowed by the verdict.

On the principle of this case of Woodham *vs.* Gelston, the charges of the auction sales are allowable, because such sale had become necessary, and the expenses thereof became a charge on the teas; also fire insurance, which is a substitute for bailment, and the premium paid in place of storage.

No case at common law has been cited which conflicts with this rule to any extent, except one under the patent law, in which the learned judge of the first circuit has adjudged counsel fees in prosecuting a suit for an infringement of a patent right, to be a part of the "actual damage" sustained by the plaintiff. Without questioning the correctness of this decision, it is sufficient to observe, that it may have been founded on the words of the act of Congress, or reasons growing out of it; it is not declared to be a rule applicable to ordinary actions of trespass by the principles of the common law. Had it been so declared, the high authority of that court would have induced me to doubt the correctness of my opinion. But it does not seem to me to establish the principle which must govern the present case, and leaves me free to follow the settled course of decisions in making the value of the property and interest for its detention, the only test of damages in cases like the present. There is the same reason for making the expenses of prosecuting and conducting a suit for the enforcement of a contract, as for the recovery of damages for a trespass divested of every feature of aggravation; the legal compensation for the detention of a debt is the amount due, interests and costs. Courts and juries can make no allowance for expenses incurred by withholding money justly due, however groundless or unjust the pretext for refusing payment may be. The rule of damages is fixed and invariable; there can be no legal distinction between the mere detention of property and the price at which it was sold. If Conard had purchased these teas and refused to pay the price, the plaintiffs right of recovery be-

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comes limited to that and interest; by the levy, he becomes liable for their value or market price. The expenses of the plaintiffs in pursuing their right to damages due by contract or those due by tort, would seem to come under the same principle of justice and law. It might be a good principle to allow them in both cases, but I find none such established so as to have become a rule which can be laid down to you as the existing law of the action of trespass. It is all important that, in matters of this kind, the principle which governs them should be fixed and uniform; if we once begin to diverge from the old line, it will be difficult to draw and define a new one with accuracy. It may be thought a hardship that the plaintiffs shall not be allowed their actual disbursements in recovering their property, but the hardship is equally great in a suit for money lent, or to recover possession of land; they are deemed in law, losses without injury, for which no legal remedy is afforded.

I am, therefore, of opinion, that you cannot, in assessing damages in this case, allow any of the items claimed by the plaintiffs for disbursements, they being consequent losses only, and not the actual or direct injury to their property which they have sustained by its seizure and detention, for which alone they are entitled to recover damages in this case, it not being attended with any circumstances of aggravation on the part of the defendant. Had there been any such, a very different rule would have been applied, by reimbursing the plaintiffs to the full extent of all their expenses and consequential losses.

You will then carefully weigh all the evidence in the cause, and ascertain the true value of the teas at the time of the levy, or when they could have come into market by the rules of the custom-house, if there had been no claim asserted to them by the United States, other than for the duties, with interest, deducting therefrom the nett amount of sales, after payment of duties and charges of sale, the balance will be the amount to which the plaintiffs will be entitled. You will consider Mr. Conard as the only defendant; the Government is no party to this suit, nor is there any evidence which justifies us in saying that they agreed to indemnify him; that must depend exclusively in the discretion of Congress, who are bound by no pledge given by executive officers. You will have no reference, in making up your verdict, to the course which may, in any event, be taken then on an application by Mr. Conard for relief. You will award to the plaintiffs such sum as you may think them entitled to receive from the defendant, according to the rules of law, without taking into view the supposed hardship on him. The plaintiffs recovery is not to be one dollar less than their legal right, though it might ruin the defendant; nor one dollar more, though you might think the public treasury would be opened for his relief."

And thereupon the counsel for the said defendant did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record, the said counsel for the said defendant did then and there tender this bill of exceptions to the opinion and decision of the said court, and requested the seals of the judges aforesaid should be put to the same, according to the form of the statute in such case made and provided; and thereupon the aforesaid judges, at the request of the said counsel for the defendant, did put their seals to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this twenty-second day of May, A. D. 1830.

HENRY BALDWIN. [L. S.]

The Pacific Ins. Company in account current with John Hone & Sons.

Dr.		Int. to Mar. 1828.		Cr.	
1827.					
April 27, to bond due Mar. 25, 1828	25,652 00	4	17 10	1827. Sept. 21. Sales 24th Mar., 1872;	86,859 4
Do do do	24,059 60				57,238
May 11, cartage & labor	63 31				86,931 42
June 6, cooperage	3 00				
Sept. 29, weighing, labor, &c.	105 59	202	9 39		
Oct. 24, labor	6 94				
Nov. 3, cooperage	100 46				
	49,990 90		26 49		$86,931 42
			50,017 39		
		Balance	36,914 03		
			86,931 42		

Balance due you, March 29, 1828, $36,914 3.

JOHN HONE & SONS.

November 6, 1827.

(No. 54.)

Sales at auction by order of the Pacific Insurance Company.

1827. Sep. 21	6 months.					
Lot 1	5 chests y. hyson	Clarke & T.	433	77	333 41
	10 "	G. S. Mount	865	76½	661 73
	7 "	C. & Jacques	597	76½	456 70
2	26 "	J. Van Nostraud & Co.	2,218	75	1,663 50
	20 "	C. & B. Wardell	1,720	75	1,290 00
3	10 "	W. R. & E. Hitchcock	860	76	653 60
	10 "	Webb & Lockwood	875	95	642 75
	10 "	G. Smith	849	76	645 24
	5 "	R. & Purdy	429	76	326 4
	10 "	W. & Gissup	853	76½	582 93
	9 "	Do	762	76½	582 93
Lot 4	5 "	Storm, B., & C.	439	75½	381 45
	5 "	J. Williamson	439	73	320 47
	5 "	F. Norden & B.	441	73	321 93
	5 "	Boyd & Sugden	434	73	316 82
	8 "	D. Pomeroy	708	73	516 84

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SALES AT AUCTION—Continued.

Lot 5	10	Chests y. hyson	J. Johnson & Sons	891	72	641	52
	6	"	J. Anderson	534	71	379	14
	10	"	Clarke & T.	877	70	613	90
	5	"	J. Williamson	442	70	309	40
Do 6	14	"	J. Johnson & Sons	1,203	71	854	13
7	34	"	E. Humphrey	3,063	71	2,174	73
8	10	"	J. T. Storm	891	67	596	97
	9	"	Do	806	65½	527	93
	5	"	Bailey & Co.	448	65	291	20
	75	"	J. Johnson & Sons	6,720	65	4,368	00
Do 9	50	"	Marvin, D. & H.	4,537	69	3,130	53
	17	"	Boyd & S.	1,536	09½	1,063	35
10	40	"	G. W. & H. Bruen	3,813	66	2,516	58
	5	"	B. Osborn, H.	467	66	308	22
11	24	"	Bailey & H.	2,061	75	1,545	75
12	21	"	A. V. Winnins	1,780	72	1,281	60
13	10	"	J. T. Storm	821	70½	578	81
	15	"	Robert Smith	1,267	70½	893	23
14	36	"	B. Osborn & Co.	2,974	84	2,498	16
15	69	"	G. W. & H. Bruen	5,798	67	3,884	66
16	46	"	Do	4,222	65	2,744	30
17	47	"	Do	4,210	65½	2,757	55
18	10	"	Brainer & R.	841	65	546	65
	5	"	S. Read	406	66	267	96
	23	"	G. W. Bruen	1,997	66½	1,328	00
19	39	"	Do	3,374	64	2,159	36
20	5	"	R. Coit	435	66	287	10
Lot 20	37	"	G. W. Bruen	3,183	65	2,068	95
21	42	"	Do	3,816	65	2,480	40
22	10	"	Mills & D.	875	73	638	75
	5	"	G. M. Hinchman	423	73	308	79
	4	"	Saterlee & D.	353	72	254	16
	5	"	W. A. Taylor & Co.	435	71	308	85
	5	"	Stephens, L., & Co.	438	71	320	98
	5	"	Storm B., & Co.	437	71	310	27
	5	"	Do	441	71	313	11
	20	"	P. G. Hark & Co.	1,784	70	1,257	72
23	5	"	Hopkins & Co.	434	72	312	48
	10	"	Turnbull & T.	855	72	615	60
	19	"	R. Smith	1,658	72	1,183	76
24	19	"	G. W. & H. Bruen	1,806	66	1,191	96
25	5	"	Hopkins & H.	431	81	349	11
	5	"	J. Johnson & Son	438	80	350	40
	5	"	Brainard & K.	432	80	345	60
	5	"	W. H. Ireland	445	80	356	00
	5	"	G. M. Hinchman	433	80½	348	57
	5	"	W. & Jessup	443	80½	348	57
	5	"	C. & D. Cashman	447	80½	359	84
	6	"	G. H. & R. Stanter	529	80½	425	84

SALES AT AUCTION—Continued.

26	10 Chests y. hyson	J. T. Storm	872	78½	684 52
	10 "	D. Pomeroy, J.	885	78½	694 72
	10 "	Mills & D.	874	78½	689 09
	9 "	W. & Jessup	792	78½	621 72
27	15 "	B. & Betts	1,371	79	1,051 49
	26 "	R. Smith	2,294	78	1,789 32
28	10 "	J. Johnson & Son	811	78	632 58
29	10 "	Do	849	74½	622 51
30	10 "	G. Smith	847	73½	622 54
	10 "	Do	852	72	613 44
	20 "	Do	1,725	72	1,242 00
31	10 "	J. T. Storm	862	63	543 06
	30 "	Do	2,596	62	1,622 50
32	5 "	J. Wolff	457	66½	303 91
	10 "	E. Humphrey	915	65½	599 32
	40 "	G. W. & H. Bruen	3,591	65½	2,352 10
	5 "	J. Wolff	454	65½	297 37
33	42 "	G. W. & H. Bruen	3,354	65½	2,196 87
34	19 10 catty boxes -	J. Williamson	247	80	197 60
37	5 chests hyson -	Do	324	104	336 96
	20 "	G. W. & H. Bruen	1,304	103	1,343 12
	5 "	Gibbs & Jenny	332	102	338 64
	5 "	J. Williamson	3,231	101½	327 84
	5 "	Hopkins & H.	322	101	325 22
	65 "	G. W. & H. Bruen	4,247	100½	4,268 24
Lot 38	103 chests skin -	T. Depau	6,709	48	3,220 32
Lot 4	1 do y. hyson -	D. Pomeroy, J.	88	73	64 24
Oct. 8	1 catty box tea -	- - -	4	80	3 20
12	4 chests y. hyson	E. Hilton	359	46	165 14
			127,768		90,499
	Charges.	lbs. -			
	State duty, 1 per cent -	904 99			
	Commission and guarantee 3½	2,714 47			
	Catalogues, $5 adv'g $15 -	20 00			
					3,639 96
				$	86,859 04

E. E.

NEW YORK, *November* 3, 1827.

(No. 55.) J. HONE & SONS.

640

Know all men by these presents, that we, the Pacific Insurance Company of New York, are held and firmly bound unto the United States of America in the sum of sixty thousand dollars, lawful money of the United States of America, to be paid to the said the United States of America, their certain attorney, successors, or assigns, to which payment well and truly to be made and done, we do bind ourselves and our successors firmly by these presents.

Sealed with our seals of incorporation, and dated this 9th day of October, A. D. 1826.

Whereas the goods and merchandise described in an invoice, a copy whereof is annexed, imported from Canton in the ship Addison, safely arrived at the port of Philadelphia, have been levied on by the marshal of the eastern district of Pennsylvania, by virtue of an execution on a judgment in favor of the United States against Edward Thompson, of Philadelphia, as the property of the said Edward Thompson.

And whereas the Pacific Insurance Company of New York claim to be the owners in law or equity of the said goods, and actually hold the bill of lading and invoice thereof, under which the said goods have been duly entered at the custom-house, and the duties thereon secured to be paid according to law.

And whereas it has been agreed by and between the Secretary of the Treasury, in behalf of the United States, and the said Pacific Insurance Company, that a suit shall be instituted by the said named company against the said marshal, in which the sole question to be tried and decided shall be, whether the United States or the said Pacific Insurance Company are entitled to the said goods and the proceeds thereof.

And whereas it has been further agreed, that the said Pacific Insurance Company, without prejudice to the rights of the United States under the said executions or otherwise, and that they shall sell and dispose of the same, in the best manner and for the best price they can obtain for the same, and for cash or upon credit as they may judge expedient, and that the moneys arising from the sale thereof, deducting the duties and all customary charges and commissions on such sales, shall be deposited by the said Pacific Insurance Company, as soon as received from and after the sale, in the bank of the United States to the credit of the President of the bank in trust, to be invested by the said President of the said bank in the stocks of the United States, in the name of the President in trust, so to reman until it shall be judicially and finally decided to whom the said goods or the proceeds thereof do of right and according to law belong; and in the further trust, that whenever such decision shall be made, the said President of the said bank shall deliver the said moneys or transfer the said stocks to the party in whose favor such decision shall be made.

And whereas, in pursuance of the said agreement, the said goods have this day been delivered to the said Pacific Insurance Company for the purposes aforesaid, it being understood and agreed that such delivery of the goods shall not prejudice any existing right of the said company.

Now the condition of this obligation is such, that if the said Pacific Insurance Company shall comply with the said arrangements, and well and truly sell and dispose of the said goods, and cause the moneys arising from the sale thereof, after deducting therefrom the duties, charges, and commissions, as aforesaid, to be deposited in the bank of the United States to the credit of the President of the said bank in trust, according to the true intent and mean-

ing of the above recited agreement, and for the purposes therein set forth, this obligation to be void, otherwise to be and remain in full force and virtue.

The Pacific Insurance Company of New York, by
JON. H. LAWRENCE, *Pres't.* [L. S.]

Signed and sealed in the presence of
WM. COVENTRY H. WADDELL.
JAMES CORKREY.

(No. 28.)

Shipped in good order and condition by R. Fisher, for J. R. Thomson, on board the ship called the Addison, whereof Andrew Hedelius is master for this voyage, now lying in the port of Canton, and bound for Philadelphia, six hundred and ninety chests young hyson tea, one hundred and three chests hyson skin do, and twenty thirteen-pound boxes young hyson tea, being marked and numbered as in the margin; to be delivered in like good order and condition, at the aforesaid port of Philadelphia, (the dangers of the sea only excepted,) unto order or to assigns, he or they paying freight for the said goods at the rate of—nothing, with primage and average accustomed.

E. T.		
Sequa,	7 a 8	251 ch.
"	10 a 13	
Manhop,	14 a 19	297 do.
"	34 a 36	
Tongqua,	26 a 28	142 do.
Sequa,	51	103 do.
Manhop,		20 boxes

In witness whereof, the master or purser of the said ship hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished the others to stand void. Dated at Canton, the day of November, 1825.

(No. 3.) ANDREW HEDELIUS, JR.

Invoice of merchandise shipped by Rodney Fisher, attorney for John R. Thompson, on board the American ship Addison, A. Hedelius, master, bound for Philadelphia, for account and risk of Edward Thompson, Esq., a native citizen of the United States of America, residing there, and consigned to order:

Marks.	Nos.	Description.	Nett pounds.	P. C.	Price.	T. & M. C.	
E. T. Sequa Manhop	7 a 8 10 a 13	251 chests y. hyson	23,367	167 75	44	7381 0 0	$10,251 39
	14 a 19 34 a 36	297 " "	25,729	192 97	46	8876 6 2	12,328 63
		142 " "	11,853	88 94	44	3913 3 6	5,435 22
		103 " hyson skin	6,653	48 89	27	1320 0 3	1,833 37
		20 13 lb. boxes young hyson, at $6 63 per box				-	132 60
		E. E.					$29,981 21

RODNEY FISHER,
Attorney for J. R. Thompson.

CANTON, *November* 22, 1825.

(No. 4.)

641.

Know all men by these presents, that we, the Pacific Insurance Company of New York, are held and firmly bound unto the United States of America in the sum of sixty thousand dollars, lawful money of the United States, to be paid to the said United States of America, their certain attorney or assigns, to which payment well and truly to be made and done, we do bind ourselves and our successors by these presents.

Sealed with our seal of incorporation, and dated this 9th day of October, A. D. 1826.

Whereas the goods and merchandise described in an invoice, a copy whereof is annexed, imported from Canton in the ship Superior, safely arrived at the port of Philadelphia, have been levied on by the marshal of the eastern district of Pennsylvania, by virtue of an execution on a judgment in favor of the United States against Edward Thompson, of Philadelphia, as the property of the said Edward Thompson.

And whereas the Pacific Insurance Company of New York claim to be the owners in law or equity of the said goods, and actually hold the bill of lading and invoice thereof, under which the said goods have been duly entered at the custom-house, and the duties thereon secured to be paid according to law.

And whereas it has been agreed by and between the Secretary of the Treasury, in behalf of the United States, and the said Pacific Insurance Company, that a suit shall be instituted by the said named company and the said marshal, in which the sole question to be tried and decided shall be, whether the said United States or the said Pacific Insurance Company are entitled to the said goods or the proceeds thereof.

And whereas it has been further agreed, that the said goods shall be delivered to the said Pacific Insurance Company, without prejudice to the rights of the United States under the said executions or otherwise, and that they shall sell and dispose of the same, in the best manner and for the best price they can obtain therefor, and for cash or upon credit as they may judge expedient; and that the moneys arising from the sale thereof, deducting the duties and all customary charges and commissions on such sales, shall be deposited by the said Pacific Insurance Company, as soon as received from and after the sale, in the bank of the United States, to the credit of the President of the said bank in trust, to be invested by the President of the said bank in the stocks of the United States in the name of the said President in trust, so to remain until it shall be judicially and finally decided to whom the said goods or the proceeds thereof do of right and according to law belong; and on the further trust, that whenever such decision shall be made, the said President of the said bank shall deliver the said moneys or transfer the said stock to the party in whose favor such decision shall be made.

And whereas, in pursuance of the said agreement, the said goods have this day been delivered to the said Pacific Insurance Company, for the purposes aforesaid, it being understood and agreed that such delivery of said goods shall not prejudice any existing right of the said company.

Now the condition of this obligation is such, that if the said Pacific Insurance Company shall comply with the said arrangements, and well and truly sell and dispose of the said goods, and cause the moneys arising from the sale as aforesaid, after deducting therefrom the duties and charges and commissions as aforesaid, to be deposited in the bank of the United States, to the credit of the President of the said bank in trust, according to the true

intent and meaning of the above recited agreement, and for the purposes therein set forth, this obligation to be void; otherwise to be and remain in full force and virtue.

The Pacific Insurance Company of New York, by
JON. H. LAWRENCE, *Pres't.* [L. S.]

Signed and sealed in presence of
WM. COVENTRY WADDELL,
JAMES CORKREY.

Shipped in good order and condition by R. Fisher, attorney for J. R. Thompson, in and upon the ship called the Superior, whereof John Phillips is master for this voyage, now lying in the port of Canton, and bound for Philadelphia, six hundred and eighteen chests of young hyson tea, and one hundred and five chests hyson tea, being marked and numbered as in the margin; to be delivered in the like good order and condition, at the aforesaid port of Philadelphia, (the danger of the seas only excepted,) unto order or to assigns, he or they paying freight for the said goods at the rate of—nothing, with primage and average accustomed.

E. T.		
Houqua,	1 a 5,	182 ch.
Mouqua,	22 a 24,	90 ch.
"	43 a 45,	131 ch.
Hipshing,	18 a 21,	215 ch.
Houqua, H.		105 ch.

In witness whereof, the master or purser of said ship hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished the others to stand void. Dated at Canton, 2d of December, 1825.

JOHN PHILLIPS.

(No. 5.)

Invoice of merchandise shipped by Rodney Fisher, attorney for John R. Thompson, on board the American ship Superior, John Phillips, master, bound for Philadelphia, for account and risk of Edward Thompson, Esq., a native citizen of the United States of America, residing there, and consigned to order.

Marks.	Description.	Nett pounds.	P. C.	Price.	T. & M. C.	
E. T.						
Houqua, 1 a 5	182 ch'ts. y. hyson tea	15,855	118 91	46	5469 8 6	7,597 03
Mouqua, 22 a 24	90 " "	8,151	61 13	46	2811 9 8	3,905 52
" 43 a 45	131 " "	11,013	82 60	48	3964 8 0	5,506 66
Hipshing, 18 a 21	215 " "	19,405	145 54	46	6695 7 6	9,299 67
Houqua, A.	105 " hyson	6,877	51 57	51	2630 0 7	3,798 99
E. E.						$30,107 87

RODNEY FISHER,
Attorney for J. R. Thompson.

CANTON, *December* 2, 1825.

(No. 6.)

642.

Statement shewing the average price at which the teas of the Maria, America, and Washington cargoes sold, in the months of March, April, and May, 1826.

Description.			Pounds.	Proceeds.	Average.
1826.					
March 27.	Maria -	- Hyson	5,173	85,220 36	
April 28.	America	- do	16,553	16,954 91	
May 3.	Washington	- do	13,767	13,905 88	
			35,493	36,081 15	101 $\frac{66}{100}$
	Maria	- Y. hyson	42,110	40,738 02	
	America	- do	122,593	115,873 55	
	Washington	- do	107,769	97,762 22	
			272,472	254,373 79	93 $\frac{38}{100}$
	Maria	- H. skin	68,245	40,554 44	
	America	- do	89,629	58,592 57	
	Washington	- do	97,121	61,889 90	
			254,995	161,036 91	63 $\frac{15}{100}$
	Maria	Gunpowder	1,818	2,211 60	
	America	- do	1,170	1,541 00	
	Washington	- do	3,500	4,635 72	
			6,488	8,388 32	129 $\frac{29}{100}$
	Maria	- Imperial	600	780 00	
	America	- do	241	308 48	
	Washington	- do	1,000	1,295 40	
			1,841	2,383 88	129 $\frac{49}{100}$
	America	- Souchong	140,47	8,201 68	
	Washington	- do	8,734	5,923 56	
			22,781	14,125 24	62
	Maria	- Pouchong	348	302 76	
	America	- do	1,588	1,064 00	
	Washington	do & Pecco	1,225	826 28	
			3,161	2,193 04	69 $\frac{37}{100}$

SALES OF TEAS—Continued.

Description.			Pounds.	Proceeds.	Average.
Maria	-	Cassia	6,389	1,862 97	
America	-	do	5,200	1,498 00	
Washington	-	do	3,285	956 75	cts.
			14,874	4,317 72	29
Washington	-	Bohea	3,848	1,067 80	27¾

Examined by us and compared with the sales. May 15, 1830.
D. B. STACEY,
PETER MACKIE.

A.

OCEAN INSURANCE COMPANY, *vs.* JOHN CONARD. } *Trespass vi et armis de bonis asportatis. Circuit court United States. Tried from 17th to 20th May*, 1830.

The court is respectively requested to charge the jury:

1. That the United States had a lien upon the goods imported in the ships the Superior and the Addison, from Canton, in the month of March, 1826, for the duties accruing upon that importation; and that the United States, as an effect of their lien, had the possession of the said goods the moment of their importation.

2. That the documents exhibited in evidence prove that Edward Thompson was, in fact, *the importer* of the goods in question, and that, under the act of Congress of 1799, he must be regarded for the purposes of that act, as the original consignee and owner, although the *property* in the goods might have been in the plaintiffs.

3. That Edward Thompson, as the *importer*, and the *original consignee and owner*, was the only person entitled, *by law*, to enter the goods at the custom-house, or give bonds for the duties, or to pay the duties; and that any recognition by the collector or other public officer, or any other person as entitled to enter, is not authorized by the law of the United States, and cannot be admitted to vary the rights of the parties.

4. That the United States having a lien upon and a possession of the goods at the time of their importation, and Edward Thompson being, in contemplation of the act of Congress, the only person by whom their entry could legally be made, the possession of the United States was never divested by any act of the plaintiffs to which the United States did not assent.

5. That possession of the goods being, at the time of the levy made by the defendant, legally in the United States, and neither actually nor constructively in the plaintiffs, the present action, founded as it must be, upon a possession by plaintiffs, either actual or constructive, cannot be maintained.

6. That according to the act of Congress, and Edward Thompson being regarded as the original importer, owner, and consignee, and he being large-

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ly indebted upon bonds to the United States for duties then remaining unpaid, the lien of the United States for the duties which accrued on that importation could not be divested except upon the payment of the said duties in cash.

7. That the agreement, of the 9th of October, 1826, connected with the facts given in evidence, amounts to a release or waiver by the plaintiffs of all demand for damages arising from the acts of the officers of the United States, in taking possession and detaining the goods in question.

8. That in an action of trespass, such as the present, where no circumstances of aggravations in the motives or conduct of the defendant are alleged or pretended, the value of the goods taken, or the diminution of that value by their detention, is the only just and legal measure of damages.

9. That the claim for damages on the score of professional compensation, paid in this and other causes connected with the transaction, is inadmissible; and that, therefore, the evidence respecting it should be wholly disregarded by the jury.

G. M. DAHAT, *D. Att'y.*

May 20, 1830.

Depositions of witnesses, produced, sworn, and examined on the part of of the plaintiffs, in a certain cause now depending and at issue in the circuit court of the United States of America, in and for the district of Pennsylvania, in the third circuit, in which the Merchants' Fire Insurance Company, citizens of the State of New York, are plaintiffs, and John Conard, a citizen of the State of Pennsylvania, is defendant.

Austin L. Sands, being first duly sworn, declares:

To the first interrogatory, he saith, he knows there is a corporate company in the city of New York known by the name of the Merchants' Fire Insurance Company; and that he knows John Conard, the defendant.

To the second interrogatory, he answers, that he does know of the sales of teas and other merchandise which were imported into Philadelphia, in the spring of 1826, by the ships "Woodrup Sims," "Superior," and "Addison," and subsequently delivered to various insurance companies of New York for sale. His knowledge of the sales of teas and other merchandise aforementioned, arose from transcripts of sales furnished to deponent by the insurance companies above named, and by the several other insurance companies named as plaintiffs in the caption to the interrogatories.

To the third interrogatory, he answers, that he does not recollect the prices; that he has not now got the account of sales, but has had them in his possession.

To the first additional interrogatory, he answers, that he did act as agent for the different insurance companies mentioned in the caption to the interrogatories, in the receipt of merchandise delivered up by order of the government, on bond, after they had been levied on by the marshal of the district of Pennsylvania, as the property of Edward Thompson. Witness was employed to go on to Philadelphia to get the goods. Witness was appointed an agent for that purpose in the month of March, 1826. Witness went on immediately after. The vessels, the Addison and the Superior, arrived about the 15th or 16th of March, 1826, and while the goods were on board, witness applied to the collector for permission to enter them. Witness exhibited to the collector his power of attorney, and the invoices and bills of lading of the return cargoes of the goods consigned to the respective companies; (witness now produces copies of the said in-

voices and bills of lading, which are annexed, and marked and numbered from 1 to 22 inclusive, excepting No. 1 and No. 5,) and requested permission of the collector to enter them, which he refused. About 19th of April ensuing, the Woodrup Sims also arrived at Philadelphia, when witness again applied to the collector, in behalf of the companies, and exhibited to him the homeward bills of lading and invoices of the cargo belonging to the said companies, (whereof copies are also produced by the witness and annexed, and numbered from No. 23 to 26, inclusive,) and made a similar demand for leave to enter and receive the goods by that vessel, which was refused by the collector, who stated, generally, that he could do nothing in the business without the instructions of the district attorney. (James A. Hamilton, one of the commissioners, objected to the declaration of the collector above, stated by the witness, as not being testimony. He was overruled by the two other commissioners on the suggestion that this fact would be made pertinent by the testimony of the other witnesses in the cause.) In the latter part of March, witness was permitted to enter the goods by the Addison and Superior, merely for the purpose of landing, but under an express understanding that they were to be put in the public store, under the exclusive charge of the marshal or the government, without any participation in the possession by the companies. A similar arrangement was subsequently made with respect to the goods by the Woodrup Sims, and under similar circumstances. About the middle of November following, the goods specified in the several invoices and bills of lading, (copies of which are annexed as aforesaid,) were, by arrangement with the government, finally given up to witness as agent for the several companies, upon their giving bonds to the government to abide the event of suits to determine the title to the goods, which said original bonds, excepting one given by the Pacific Insurance Company, are produced by the witness and annexed, and are numbered from No. 27 to No. 37, inclusive, which bonds were surrendered up by the government after the said suits were determined. Upon the goods being given up, in November, 1826, regular entries were made by witness and the duties secured according to law. The goods were immediately shipped by witness and consigned to the respective companies in New York, where they were received and afterwards sold, with the exception of that part of the goods belonging to the Niagara and Pacific Insurance companies, which remained in Philadelphia. From the time of the arrival until obtaining possession of the goods as aforesaid, witness had repeated interviews with the collector and district attorney upon the subject of the seizure made by the marshal, remonstrating against the proceedings of the government, and used every exertion to obtain possession of the property, and, from a time shortly after his arrival, gave the collector and district attorney to understand that the companies were willing to give bonds similar to those afterwards accepted. Witness had no authority from the companies to make such arrangements, but knew at the time they were willing to do so. The exertions of witness were ineffectual. Besides the goods specified in the several invoices and bills of lading aforesaid, whereof copies are annexed, the Merchants' Fire and Atlantic Insurance companies, aforesaid, claimed other goods, amounting, by invoice, to about fifty thousand dollars, by the ship Superior, of which claim witness, as agent for the said companies, notified the collector, at the same time that witness applied to enter the aforementioned goods, and informed him of their holding respondentia bonds on the said goods, and the outward bill of lading and assign-

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ment of specie contained in it, and of the return cargo, and forbid his delivering the last mentioned goods to any other person than those companies. Witness produces and annexes copies of the respondentia bonds, outward bills of lading, and assignment, above referred to, and annexes them, numbered from No. 38 to 40 inclusive. Witness had frequent consultations with the officers and agents of the different companies, who all evinced a desire to dispose of the goods to the best advantage.

To the second additional interrogatory, he answers, that he does not know any thing of the matters inquired of in this interrogatory.

To the third additional interrogatory, he answers, that he knows nothing further than he has already stated.

To the fourth additional interrogatory, he answers, that he knows of certain moneys expended by the different insurance companies above mentioned; that the accounts hereto annexed, severally marked No. 41 to No. 44 inclusive, are original accounts rendered by witness to the said companies, and paid by them to witness, and include as well the moneys disbursed by witness on account of the said goods, as the charges made by witness for his agency relative thereto; that the agency and services of witness, for which the said charges were made, consisted principally, if not altogether, in his trouble and exertion in procuring the possession of the property. Witness also attended to the shipping of the said goods from Philadelphia to New York, except those belonging to the Niagara and Pacific Insurance companies, which were not removed by the agency of witness. Witness made the same charge against the Niagara and Pacific Insurance companies as against the other companies. Witness thinks, on a consideration of his services, that he would have been entitled to the same compensation had his services terminated with obtaining the possession of the goods. Of the disbursements made by witness, and mentioned in the said accounts, numbered from 41 to 47 inclusive, those stated as made for insurance against fire, for broker preparing entries and bonds, for cartage to store, and cooperage on landing, and for storage, were incurred after the arrival of the goods and before they were delivered to witness. The charges for payments at the custom-house, on bonding, for duties, re-shipping, bonds, entries and permits, and petty charges, were incurred partly before and partly after the goods were delivered to witness; the charges for cartage to packets and cooperage on shipping, were incurred after the goods were delivered to witness. The disbursements mentioned in the said accounts, were incurred necessarily, as witness believes, in obtaining the possession of the goods, and were paid by witness, and were repaid to witness by the respective companies to whom the said accounts purport to be rendered. Witness also rendered a similar account to the Atlantic Insurance Company, amounting to the sum of four hundred and twenty-eight dollars and forty-eight cents, for moneys disbursed and commissions, which was also paid to witness. Witness has not now in his possession the said account. To the best of witness' recollection the items were for like charges and nearly in the same proportions with those mentioned in the above mentioned account.

Witness also produces and annexes an account, marked No. 48. Said account is a statement of moneys paid by witness to counsel, upon the argument of the cause at Washington, in which the Atlantic Insurance Company were plaintiffs, and which was one of the suits instituted, as herein before mentioned, to determine the title to the goods. Said payments were made by witness after the delivery of the goods, and were paid to witness,

in part, by the several companies, as mentioned in the said account, and the residue of six hundred and sixty-six dollars and sixty-six cents was collected from Robert Smith.

Witness also produces and annexes an account, marked No. 49, which contains a true statement of charges made by witness for his services, and for disbursements made by witness (excepting the charge of five hundred dollars paid D. Webster, and the charge of fifty-eight dollars and fifty-four cents for printing, which was not made by witness,) attending the trial of the other causes, instituted, as aforesaid, at Philadelphia; and the whole amount of the said account was afterwards collected by witness from the companies, in the proportions mentioned in the said account. In addition to the above, witness, shortly after the commencement of his agency, viz., in the month of March or April, 1826, paid to Mr. Hopkinson, for counsel in the business of his agency, two separate payments of one hundred dollars each, and to Mr. Meredith the sum of one hundred dollars, which payments were by drafts drawn by witness upon the American Insurance Company. Witness produces and annexes the said drafts, marked No. 50, 51, and 52.

To the fourth interrogatory, he answers, that he is not aware that he knows any thing material, further than he has above stated.

In explanation of the statements above, made by witness, in regard to the copies of bills of lading, No. 1 and No. 5, witness answers, that those hereto annexed, numbered 1 and 5, were made out from their corresponding invoices, the original of said bills of lading not being in the possession of witness, and being, as witness understands, in Philadelphia.

AUSTIN L. SANDS.

William C. H. Waddell, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows the parties plaintiffs above named, but does not know the defendant.

To the second interrogatory, he answers, that the teas belonging to the Pacific Insurance Company were sold by John Hone & Sons. Witness was Secretary of said company and was present at the time of sale.

To the third interrogatory, and to the first, second and third additional interrogatories, he answers, that he knows nothing further than he has already answered.

To the fourth additional interrogatory, he answers, that the statement hereto annexed, and marked No. 53, contains a true statement of the expenses incurred and paid by the Pacific Insurance Company, in relation to the goods mentioned in this interrogatory, exclusive of those expenses mentioned in the account of sales and account current of John Hone & Sons, which account of sales and account current of John Hone & Sons are now produced by witness and annexed, marked No. 54 and 55. Witness cannot discriminate between those expenses incurred before the delivery of the goods and those incurred afterwards, except so far as the same appears by the dates of the items in the said statement, No. 53.

To the fourth interrogatory, he answers, that he knows nothing of the matters inquired of in this interrogatory.

WM. COVENTRY H. WADDELL.

Charles King, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

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To the first interrogatory, he answers, he knows all the parties mentioned in the caption to the interrogatories, but is particularly conversant with the Atlantic and American Insurance companies only.

To the second interrogatory, he answers, that he knows nothing of the matters inquired of in this interrogatory.

To the third interrogatory, he answers, that he knows nothing of the matters inquired of in this interrogatory.

To the first additional interrogatory, he answers, that he had no agency in the business referred to in this interrogatory, and has no knowledge of the matters inquired of therein.

To the second additional interrogatory, he answers, that he knows nothing of the matters inquired of in this interrogatory.

To the third additional interrogatory, he answers, that he knows nothing of the matters inquired of in this interrogatory.

To the fourth additional interrogatory, the answers, that he knows nothing of the matters inquired of in this interrogatory.

To the fourth interrogatory, he answers, that he was engaged by the companies, in the month of February, 1826, to go to Washington to represent to the government the hardship occasioned by the claim of these teas, then expected, which claim it was understood was made by government. Witness went to Washington accordingly and claimed these teas of the government as belonging to the companies by virtue of the respondentia bonds. The teas alluded to by witness were those expected by the Addison, Superior, and Woodrup Sims, and asked from the government that they would relinquish all claim upon them; the government refused. When witness speaks of the government he alludes to the Secretary of the Treasury and President. Witness then made a proposition to the Secretary of the Treasury that the government should relinquish these teas to the companies, they giving bonds to abide the issue of suits to try the title to the property. These were suggestions made by the witness to the Secretary of the Treasury, he not having authority to make such propositions, but knowing that the companies were willing to do so. The Secretary of the Treasury took this proposition into consideration. Witness then wrote to New York and received full powers to enter into such an arrangement. The proposition was then assented to, upon condition that the parties receiving the teas should give satisfactory bonds; that the proceeds of the teas, as sold, should be deposited in the Bank of the United States, there to remain subject to the issue of the suits. Witness objected to that arrangement, on behalf of the companies, and urged that, if they gave satisfactory bonds, the property should remain under the control and management of the companies. Objection was made to this by the Secretary of the Treasury, who referred witness finally to the President. The President, after discussing the matter, assented to witness' view of the case, and informed witness that instructions should accordingly be given to the Secretary of the Treasury, whereupon witness left Washington. After arriving at New York, witness received a letter from the Secretary of the Treasury, informing him that the matter was reconsidered. The letter referred to is produced by witness and hereto annexed, marked A. Witness urged as a motive to the Secretary of the Treasury to enter into the arrangement, the loss that would probably arise if the property was sold by the officers of the government, and the better advantage to which the companies could dispose of them, in which the Secretary of the Treasury acquiesced. Witness received for his

services five hundred dollars and his expenses, which amounted to one hundred and five dollars.

CHARLES KING.

Anthony B. Neilson, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he has some knowledge of all the respective plaintiffs, but not of the defendant, named in the title to the interrogatories.

To the second interrogatory, he answers, that he has a knowledge of sales of teas imported into Philadelphia, in the year 1826, by the Woodrup Sims, made by John Hone & Sons, for account of the Neptune Insurance Company. Witness is now, and was at the time of said sales, secretary of said company. The account of said sales delivered by said John Hone & Sons, were received by witness as secretary of said company. Witness produces the said account and annexes the same, marked No. 56.

To the third interrogatory, he answers, that he knows nothing further of the matters inquired of in this interrogatory, than the same appears by the account of sales above mentioned.

To the first additional interrogatory, he answers, that he did not act as agent in the receipt of the merchandise mentioned, and has no personal knowledge of the delivery of the same.

To the second additional interrogatory, he answers, that he has no knowledge of the matters inquired of in this interrogatory.

To the third additional interrogatory, he answers, that he knows nothing of the sales further than he has already stated, in his answer to the second interrogatory, and as the same appears by the account of sales annexed as above stated. Witness, further answering, refers to a copy of an invoice and bill of lading, exhibited to him and annexed, respectively marked Nos. 23 and 24. Witness states the said papers, numbered 23 and 24, are copies of an original invoice and bill of lading relative to said teas, belonging to the Neptune Insurance Company.

To the fourth additional interrogatory, he answers, that the statement now produced by witness and hereto annexed, marked No. 57, contains a true statement of the costs and expenses incurred and paid by the Neptune Insurance Company, in relation to the teas aforementioned, from the time of the arrival to the time of the final sale, exclusive of the commissions and charges charged in the account of sales rendered by John Hone & Sons. Witness further answers, that the said statement, No. 57, exhibits the dates at which the said respective costs and expenses were paid by the company; that the particular items in the said statement, marked A, were incurred prior to the delivery of the goods to the company, and the other items subsequent to the delivery.

To the fourth interrogatory, he answers, that he knows nothing further than he has already stated, except that the papers now produced by him, (and which are hereunto annexed, numbered 44, and from 58 to 77 inclusive,) are vouchers of some of the payments included in the statement, No. 57, before referred to.

A. B. NEILSON.

Philip Thomas, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows the several plaintiffs named in the caption to the interrogatories, but does not know the defendant.

To the second interrogatory, he answers, that he was Vice President of the Pacific Insurance Office, and was sent on to Philadelphia to give bonds for the teas claimed by that company, and did so; that the teas were delivered to witness and he shipped them for New York.. These teas were teas imported by the Addison and Superior into the port of Philadelphia, in the year 1826, and shipped to New York in the spring of the year 1827, and delivered to John Hone & Sons for sale. Witness was present at the delivery of the said teas to John Hone & Sons, and at the sale of the said teas. Witness, at the time of obtaining the teas, delivered to the collector of the customs at Philadelphia, bonds for the duties, which he now produces, and are now annexed, marked No. 78 and 79.

To the third interrogatory, he answers, that he cannot set forth the prices nor annex the account of sales of said teas, required by this interrogatory, witness having left the office before the account of sales was rendered.

To the first additional interrogatory, he answers, that he had no agency in relation to the matters inquired of by this interrogatory, except in moving the teas of the Pacific Insurance Company, in the spring of 1827, as above stated, after they had been delivered up by the government; that the papers now produced by witness, and which are hereto annexed and marked No. 80, 81, and 82, are original bills of lading of the property shipped by witness to New York.

To the second additional interrogatory, he answers, that he knows nothing of the matters inquired of in this interrogatory.

To the third additional interrogatory, he avers, that he cannot answer farther than he has already stated.

To the fourth additional interrogatory, he answers, that the statement now produced by witness, and which is annexed, marked No. 83, contains a true account of expenses paid by witness on account of said teas, and repaid to him by the Pacific Insurance Company, which expenses were incurred and paid subsequent to the delivery of the said goods by order of the government.

To the fourth interrogatory, he answers, that he knows nothing further than he has already stated, except that he was a stockholder in the Pacific Insurance Company while he was Vice President thereof, but has now no interest in said company.

PHILIP THOMAS.

Nathaniel W. Strong, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows the plaintiffs named in the title to the interrogatories, but does not know the defendant.

To the second interrogatory, he answers, that the papers now produced by witness and which are hereto annexed, and marked No. 187 and 188, are accounts of sales of teas imported into Philadelphia in the spring of the year 1826, by the ship Superior, which were subsequently delivered to the Merchants' Fire Insurance Company, of which company witness was then and is now secretary; witness attended the sales of a part of the said teas, and the accounts passed under the inspection of witness as secretary as aforesaid.

To the third interrogatory, he answers, that he cannot answer further than he has already stated.

To the first additional interrogatory, he answers, that he did not act as agent as inquired in this interrogatory, and knows nothing of the matters inquired of in this interrogatory, further than he has already stated.

To the second and third additional interrogatories, he answers, that he cannot answer further than he has already answered, except that the papers now referred to by witness and hereto annexed, and marked No. 2, is a copy of an invoice of the particular goods mentioned in the accounts of sales above mentioned.

To the fourth additional interrogatory, he answers, that the statement now produced by witness and which is hereto annexed, and marked No. 189, is a true statement of costs and expenses incurred and paid by the Merchants' Fire Insurance Company on account of the said teas; that the several items were paid at the respective dates mentioned in the said statement. Witness states that all the items in the said account which are marked with the letter P, except the item of $300 57, and of that item $200 57 accrued before the delivery of the goods by the government, and the residue thereof afterwards; that the paper marked No. 41, and those marked from No. 190 to 205 inclusive, which are hereto annexed, and also the papers which are hereto annexed and marked Nos. 187 and 188, are vouchers for the items of said statement, and that the paper hereto annexed, marked No. 27, is the original bond given to the government on the delivery of the teas to the Merchants' Fire Insurance Company aforesaid.

To the fourth interrogatory, he answers, that he knows nothing further than he has already stated, except that the paper now prduced by witness and which is hereto annexed, and marked No. 206, is a copy of an original respondentia bond held by the Merchants' Fire Insurance Company. The inward bill of lading for the proceeds of the money loaned on the respondentia bond never came to the company, nor were the goods ever delivered to the company; they went to the Nevins' of Philadelphia, and the Merchants' Fire Insurance Company have commenced a suit for the recovery thereof against the Nevins'. There was an outward bill of lading which was held by the Atlantic Insurance Company for themselves and the Merchants' Fire Insurance Company. The amount of said outward bill of lading was $51,000, in which the Merchants' Fire Insurance Company had an interest of $26,000. The said sum of $26,000 was loaned by the company to the parties mentioned in the bond, and the outward bill of lading was assigned by Edward Thompson to the Merchants' Fire and Atlantic Insurance companies, at or about the time of making said loan, as security for the said loan of $26,000 made by the said Merchants' Fire Insurance Company, and a loan of $25,000 made by the Atlantic Insurance Company.

N. W. STRONG.

James S. Schemerhorn, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows the plaintiffs named in the caption to the interrogatories, but does not know the defendant.

To the second interrogatory, he answers, that the teas imported by the ships Superior and Addison into the port of Philadelphia, in the year 1826, belonging to the Ocean Insurance Company, were sold by John Hone & Sons, who settled with witness as secretary of the Ocean Insurance Company. Witness produces the account of sales and account current rendered by John Hone & Sons, which are hereto annexed, and which are marked and numbered 84, 85, and 86.

To the third interrogatory, he cannot answer further than he has already stated.

To the first additional interrogatory, he answers, that he did not act as agent, and knows nothing of the matters inquired of in this interrogatory.

To the second and third additional interrogatories, he answers, that he cannot state further than he has already stated.

To the fourth additional interrogatory, he answers, that the statement now produced by witness and which is hereto annexed, and marked No. 87, contains a true statement of expenses incurred and paid by the Ocean Insurance Company in relation to the teas above mentioned, which payments were made at the time of the dates of the respective items, although some of them were incurred before those dates; that such of the said items as are marked P, and $827\frac{41}{100}$, part of the item of $967\frac{18}{100}$, marked C, appear to have been incurred prior to the delivery of said goods by order of government, and the residue of such items also appear to have been incurred after the delivery; that witness produces vouchers for some of the payments mentioned in said statement, which are hereto annexed, marked No. 43, and from 88 to 96, inclusive.

To the last interrogatory, witness says he knows nothing further than he has before deposed.

JAS. S. SCHEMERHORN.

Philip Hayt, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, witness says, he knows the plaintiffs, but not the defendant in the title to the interrogatory named.

To the second interrogatory, witness says, he knows nothing of the matters inquired about in this interrogatory, except from account of sales rendered to the American Insurance Company, of which he was secretary, by Haggerty, Austin, & Co., of an importation of teas imported in the spring of 1826, into Philadelphia, in the ship Woodrup Sims, of which importation the American Insurance Company were owners, and which were delivered to them by the government.

To the third interrogatory, witness says, he knows nothing further of the prices obtained for said teas than what is contained in the account of sales which he now produces and which is hereto annexed, marked No. 97.

To the first, second, and third additional interrogatories, witness says he cannot further depose than as he has already stated, and by referring to copy of invoice and bill of lading annexed, marked No. 25 and 26.

To the fourth additional interrogatory, witness produces a statement (which is hereunto annexed and marked No. 98,) of expenses incurred and paid on account of the said teas by the American Insurance Company, vouchers for which payments are produced by witness and are hereto annexed, marked from No. 99 to 118 inclusive; that the items contained in said statement were paid at the dates therein mentioned; that such of the items in the said statement as are marked P, accrued before the said goods were delivered by order of government, and the residue of said items after that time, as he believes.

To the last interrogatory, witness cannot depose further than as he has already stated.

P. HAYT.

Lawrence K. Bogert, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, witness says, he knows the plaintiffs, but does not know the defendant in the title of these interrogatories named.

To the second interrogatory, he says he was a clerk in the Atlantic Insurance Company, from March, 1825, to January, 1827, and has assisted in the office of said company from time to time, up to the present time. Witness refers to the bonds which are hereto annexed, marked No. 33 and 34. Said bonds were executed by the said company in reference to the goods belonging to said company mentioned in the invoices and bills of lading, the originals of which are in his possession, and to copies of which, hereto annexed and marked No. 13 to 17 inclusive, witness refers. The goods mentioned in the said invoices and bills of lading were imported into Philadelphia, in the year 1826, by the ships Superior and Addison, and were subsequently delivered up to the Atlantic Insurance Company.

To the third interrogatory, he answers, that the several papers now produced and which are hereto annexed, marked No. 119 to 137 inclusive, are accounts of sales of the goods mentioned in the said invoices and bills of lading, and set forth the prices that were obtained for them as far as he knows.

To the first additional interrogatory, he answers, that he did not act as agent as inquired in this interrogatory, and knows nothing of the matters inquired of in this interrogatory further than he has already stated.

To the second and third additional interrogatories, he answers, that he knows nothing of the matters inquired of in these interrogatories further than he has already stated.

To the fourth additional interrogatory, he answers, that the statements now produced by witness and which are hereto annexed, marked No. 138 and 138½, contain accounts of expenses incurred and paid by the Atlantic Insurance Company on account of the goods above mentioned, with the exception of the items marked R; that the said payments were respectively made at the dates mentioned in the said accounts; that the items marked A in one of the said accounts and part of the charge of $428 48, but what part he is unable to state, accrued before the said goods were delivered up by order of the government, and the residue of the said charges he believes accrued afterwards.

To the fourth interrogatory, he answers, that he knows nothing further than he has already stated, except that the papers now produced by witness and which are hereto annexed, and marked No. 139 to 186 inclusive, are vouchers for payments of the items of the account No. 138 and 138½, above mentioned.

LAWRENCE K. BOGERT.

Isaac S. Hone, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he has some knowledge of the plaintiffs named in the caption to the interrogatories, but does not know the defendant.

To the second interrogatory, he answers, that he has a knowledge of the sales of teas imported into Philadelphia, in the spring of 1826, by the vessels named in this interrogatory, or some of them, and subsequently delivered to insurance companies of New York; that his knowlegde arose from his being a partner of the firm of John Hone & Sons, who sold the teas import-

ed by said vessels, or some of them, for account of the Ocean Insurance Company, the Neptune Insurance Company, and the Pacific Insurance Company.

To the third interrogatory, witness refers to accounts of sales which are hereto annexed, marked Nos. 84, 85, 55, and 56, which accounts of sales show the prices for which said teas were sold by John Hone & Sons, as he has testified to in answer to the second interrogatory.

To the first additional interrogatory, he says, he did not act as agent, as is inquired of in this interrogatory, and knows nothing of the matters therein inquired about.

To the second additional interrogatory, witness says, he knows generally the prices of teas at the time referred to in the interrogatory, but for a more specific answer to the interrogatory, the witness produces the paper which is hereunto annexed, marked No. 207, which is an abstract from the books of John Hone & Sons of sales of teas made by them in the city of New York, at the dates therein mentioned. These sales were made according to the terms and course of trade in New York, are a fair test of the market price at the dates therein referred to. Witness believes, from what he knows of the teas referred to in the interrogatories, and those referred to in the paper produced by him, that their qualities were about equal, and both were equal to the fair average of teas imported into New York.

To the third additional interrogatory, witness says, he cannot answer further than he has already answered.

To the fourth additional interrogatory, witness says, that, in answer to this interrogatory, he refers to accounts of sales, marked Nos. 55 and 56, 84 and 85, to accounts current, marked No. 54 and 86, which show the expenses of the sales made by John Hone & Sons, and which were paid by the three companies before named by witness, and that these expenses were all incurred after the teas were delivered up by order of the government. The several papers, above referred to by witness, will show the names of the companies on whose account the said sales were made, and who were interested therein, and by whom the expenses above mentioned were incurred and paid.

To the fourth interrogatory, witness answers, that he knows nothing further than as he has above stated, except that, from his knowledge of sales of teas, derived from a very extensive business in that line, he verily believes that the teas mentioned in the accounts of sales referred to by him, would, if they had been sold in the months of March and April, of the year 1826, have brought much higher prices than they did bring when they were sold, as he has above testified.

ISAAC S. HONE.

Isaac S. Hone, a witness before examined, is reproduced, and testifies as follows:

To the second additional interrogatory, witness says, that having been told that the paper before produced by him, and which is hereto annexed, marked No. 207, was not sufficiently specific, witness now produces copies of two accounts of sales of teas, made at the dates specified therein by John Hone & Sons, which are hereunto annexed, marked Nos. 237 and 238; that the said accounts of sales contain true statements of the prices which the said teas produced. The teas so sold, as aforesaid, were imported in the ships Maria and America.

ISAAC S. HONE.

David Austin, produced, sworn, and examined as a witness on the part of the plaintiffs, testifies and declares as follows:

To the first interrogatory, witness says, he knows the several plaintiffs, but does not know the defendant, in the title of the interrogatories named.

To the second interrogatory, witness answers, that he knows of the sales of teas and silks imported into Philadelphia, in the month of April, 1826, by the ships Addison, Woodrup Sims, and Superior, and which were afterwards delivered to the American and Atlantic Insurance companies. Witness was at this time one of the firm of Haggerty, Austin, & Co., auctioneers, by whom the said teas and silks were sold.

To the third interrogatory, he answering, refers to an account of sales hereto annexed, marked No. 97, which exhibits the prices that were obtained at the said sale for account of the American Insurance Company. He, further answering, refers to an account of sales hereto annexed, marked Nos. 122, 123, 127, 130, 131, 132, 133, which exhibit the prices that were obtained at the said sales for the teas and other merchandise, sold as aforesaid, for account of the Atlantic Insurance Company.

To the first additional interrogatory, he answers, that he did not act as agent, and cannot answer to the other matters inquired of in this interrogatory.

To the second additional interrogatory, he answers, that he is acquainted with the market prices of teas and other merchandise of the kind above sold by witness at New York, on the 3d day of May, 1826; that the paper now produced by witness and signed by him, and hereto annexed, marked No. 210, and exhibits the prices obtained at a sale made at New York, on the last mentioned day, by the said firm; that the said sale amounted to more than $190,000; that the property was sold in the season of business, and the sale was very generally attended by the buyers in the New York market; that, in the opinion and judgment of the witness, that if the silk goods and other merchandise, (teas excepted,) sold by Haggerty, Austin, & Co., for the Atlantic Insurance Company, as before mentioned, and the like goods mentioned in the annexed papers, to which he refers, marked 14, 17, and 18, had been offered for sale in May, 1826, they would have brought from 50 to 55 per cent. advance of the cost at Canton, as stated in the invoices.

To the third additional interrogatory, he saith, that he cannot answer further than he has already, in relation to the matters contained in this interrogatory.

To the fourth additional interrogatory, he answers, that the respective accounts of sales, before referred to by him, contain an account of the commissions and expenses which accrued on the respective goods sold by Haggerty, Austin, & Co., as aforesaid, for said companies; that the same accrued after the goods were delivered by the government, and have been paid by said companies.

To the fourth interrogatory, he answers, that he knows nothing further than he has already stated.

DAVID AUSTIN.

Brittain L. Woolley, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows all the parties named in the title to the interrogatories except the defendant.

To the second and third interrogatories, he answers, that he knows nothing of the matters inquired of in the second and third interrogatories.

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To the first additional interrogatory, he answers, that he was not such agent as mentioned in this interrogatory, and knows nothing of the matters inquired of herein.

To the second additional interrogatory, he answers, that he has seen the teas mentioned in this interrogatory, and that he attended the sales of such articles in the months of March, April, and May, 1826; that, in those months, the prices at those sales ranged as follows:

Hyson - -	from	95	cents to	107	cents per pound.	
Young hyson - -	"	81	"	120	"	"
Hyson skin - -	"	53	"	87	"	"
Souchong - -	"	49	"	59	"	"
Gunpowder and Imperial	"	120	"	196	"	"
Cassia - -	"	29	"	30	"	"

To the third and fourth additional interrogatories, he answers, that he knows nothing further than he has already stated.

To the fourth interrogatory, he answers, that he knows nothing further than he has already stated.

B. L. WOOLLEY.

Elisha Tibbits, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows the parties, plaintiffs and defendant, named in the title to the interrogatories; that he is now, and was in the spring of 1826, a director and stockholder in the Ocean Insurance Company; that he has no interest in any of the other companies named as aforesaid, nor has he had any interest therein within the period aforesaid.

To the second interrogatory, he answers, that he knows that the teas and other merchandise, or the greater part thereof, mentioned in this interrogatory, were brought over to New York to be sold, and were sold at New York. Witness' knowledge arose from his being a dealer in articles of the description mentioned in this interrogatory, and the interest he felt in the seizure made of said teas and merchandise.

To the third interrogatory, he answers, that he has no recollection of the prices at which the said goods sold, and has no account of said sale in his possession.

To the first additional interrogatory, he answers, that he did not act as agent as mentioned in this interrogatory, and further he cannot declare.

To the second additional interrogatory, he answers, that he knows the prices of goods of the description mentioned in this interrogatory, in the months of March and April, of the year 1826, from attending public sales, and making and keeping memoranda of the prices which were obtained at such sales. Prices varied, according to quality, after the following rates:

Hyson teas	from	98	to 108	cents per pound.
Young hyson	"	86	to 106	"
Hyson skin	"	53	to 75	"
Gunpowder	"	115	to 120	"
Souchong	"	60	to 87	"
Cassia	"	29	to 50	"

Witness does not recollect the exact time when the merchandise mentioned in this interrogatory was sold, and cannot state the prices at that period.

To the third additional interrogatory, he answers, that he cannot answer further than he has already stated.

To the fourth additional interrogatory, he answers, that he has no knowledge of the matters inquired of by this interrogatory.

To the fourth interrogatory, he answers, that in April, 1826, he went to Washington, in behalf of Messrs. Nicholls, of New York, with a view of prevailing on the officers of the government, (the President and Secretary of the Treasury,) to make an arrangement respecting the cargoes of teas seized and levied on by John Conard, marshal of Pennsylvania, whereby the then market value of the teas might be realized. And that witness had interviews with the President and the Secretary of the Treasury on the subject, and to both of them witness represented, in the strongest terms, the illegality of and evil consequences to result from the course pursued by government, in relation to said ships and cargoes, as well in relation to Messrs. Smith & Nicoll, and Francis A. Nicoll, as also in relation to the rights and interests of the different insurance companies of New York. The President referred the whole matter to the Secretary of the Treasury, who, in substance replied, that the Attorney General, a law officer of the government, had advised to the course pursued, and that he could not interfere with it. The result was, that witness was unable to prevail on them either to abandon the seizure, or to surrender the property in question, on giving bonds with ample and sufficient security to abide the issue of a suit to be instituted for the purpose of testing the rights of the parties respectively, which witness, so far as respects the property claimed by the Messrs. Nicolls, was directed, and was fully authorized to do, and did offer; that he knows nothing further.

ELISHA TIBBITS.

Cornelius W. Lawrence, a witness produced, affirmed, and examined on the plaintiffs, testifies and declares as follows:

To the first interrogatory, he says, he knows the plaintiffs, but does not know the defendant, in the title of the interrogatories named.

To the second interrogatory, witness says, he has a particular knowledge of sales of teas imported into Philadelphia, in the spring of 1826, by the ships Superior and Addison, and subsequently delivered to the National Insurance Company of New York; that his knowledge arose out of his being a partner of the firm of Hicks, Lawrence, & Co., auctioneers, in the city of New York, by whom the said sales were made.

To the third interrogatory, witness produces accounts of sales, which are hereto annexed, marked No. 208 and 209, which exhibit true accounts of the prices at which the said sales were made, at the times they respectively bear date.

To the first additional interrogatory, witness says, he did not act as agent for the said companies, and cannot further testify in relation to the matters inquired about in this interrogatory.

To the second additional interrogatory, witness says, he cannot state very definitely what the prices of teas were at the times referred to.

To the third additional interrogatory, witness cannot answer further than he has already answered.

To the fourth additional interrogatory, in answer to this interrogatory, witness refers to the accounts of sales before referred to by him, which embrace a statement of the commissions and expenses charged by Hicks, Lawrence, & Co., on the sales there referred to, and which were paid by said

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National Insurance Company, and that the said commissions and expenses accrued after said teas were delivered up by order of government.

To the fourth interrogatory, witness answers, that he knows nothing more than he has above stated.

CORNS. W. LAWRENCE.

Thomas W. Pearsal, being produced, affirmed, and examined on the part of the plaintiffs, testified as follows:

To the first interrogatory, witness says, he knows the several plaintiffs, but does not know the defendant, in the title to these interrogatories named.

To the second interrogatory, witness says, he has a knowledge of the sales of teas, made May 3, 1827, for and on account of the Merchants' Fire Insurance Company, in the city of New York. Said sales were made by the firm of Shotwell, Fox, & Co., of the city of New York, auctioneers, of which firm he was a partner. Witness refers to account of sales, marked No. 188, which is hereto annexed, signed by said firm, which exhibits the prices the teas, so sold by Shotwell, Fox, & Co., brought at the time of the said sale, at the date above mentioned. This sale was made in the usual manner and according to the usual course of that trade in the city of New York. Witness refers to the account of sales above referred to by him, which exhibits the commissions and expenses which were incurred on said sale, and which were paid by the said Merchants' Fire Insurance Company.

To the third interrogatory, witness says, he cannot testify further than he has above stated.

To the first additional interrogatory, witness says, he did not act as agent, in the manner referred to in this interrogatory, and knows nothing of the matters referred to therein.

To the second, third, and fourth additional interrogatories, witness says, he cannot testify further than he has above stated.

To the last interrogatory, witness says, he has already stated all he knows in relation to the matters inquired about.

THOMAS W. PEARSAL.

Luman Reed, a witness produced, examined, and sworn on the part of the plaintiffs, deposes and says as follows:

To the first interrogatory, he says, that he knows the plaintiffs named in the caption to these interrogatories, but not the defendant.

To the second interrogatory, and the third interrogatory, he says, that he has no knowledge.

To the first additional interrogatory, he says, he was not such agent, and cannot answer to the other matters inquired of in this interrogatory.

To the second additional interrogatory, he says, that he saw some of the goods mentioned in this interrogatory, in the spring of 1827, and is able to judge of their quality; that he attended public sales of teas, (in which he is an extensive dealer,) in the months of March, April, and May, 1826. Here witness produces a paper, marked number 211, which is hereto annexed, and which he testifies contains a list of prices obtained for teas and cassia in the said months of March, April, and May, 1826, at the said sales; that the quality of the teas referred to in this interrogatory, which deponent saw, was of about the average of those mentioned in the said paper produced by him.

To the third and fourth additional interrogatories, he answers, that he knows nothing.

To the fourth interrogatory, he answers, that he knows nothing, unless it be material to state that the prices of teas had declined very materially between the spring of 1826 and the autumn of that year.

LUMAN REED.

Sylvester Robinson, a witness produced, affirmed, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows the several plaintiffs named in the title to the interrogatories, but does not know the defendant.

To the second interrogatory, he answers, that he was President of the Niagara Insurance Company, in the year 1824, and continued in that office from that time until the month of November, 1828; that in that situation he became acquainted with the teas imported in the ship Superior, into the port of Philadelphia, in the spring of 1826, and which were subsequently delivered to the said insurance company; the said teas were sold under the direction of witness; that, in the year 1828, the concerns of said company were placed in the hands of trustees, under an act of the Legislature of the State of New York, entitled "An act to provide for the distribution of incorporated insurance companies in the city of New York," passed April 5, 1817, and the act amending the same, passed March 23, 1821.

To the third additional interrogatory, witnesses answering, produces an account of sales of teas belonging to the said company, which is hereto annexed, marked No. 212, and also an account current, marked No. 213. The prices in the said account of sales are the true prices at which the said teas sold.

To the first additional interrogatory, he answers, that he did not act as agent, as inquired of in this interrogatory, and knows nothing of the matters inquired of therein.

To the second additional interrogatory, he answers, that he knows nothing.

To the third additional interrogatory, witness refers to papers hereto annexed, marked No. 11 and 12, which true copies of a bill of lading and invoice of the goods belonging to said company, and which were delivered by the government to the said company, and cannot state further than he has already stated.

To the fourth additional interrogatory, he, answering, refers to the said account current and account of sales hereto annexed, marked No. 212 and 213, which contains a statement of all the costs and expenses attending sale of the said teas, after they were delivered to the said company as aforesaid. Witness produces a statement which is hereto annexed, and marked No. 214, which exhibits a true account of costs and expenses incurred and paid by the said Niagara Insurance Company, in relation to the said ; said expenses were paid by the Niagara Insurance at the time they bear date; that some of the said expenses were incurred before such payments; that the items in the account, marked P, were incurred before the said teas were delivered up by the government, and the residue of the said items afterwards.

To the last interrogatory, he answers, that he knows nothing further than he has already stated.

SYLVESTER ROBINSON.

William E. Wilmerding, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows nothing of the parties, except that he believes there are such companies in the city of New York, as named in the title to the interrogatory.

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To the second and third interrogatory, he answers, that he knows nothing.

To the first additional interrogatory, he answers, that he was not such agent, and knows nothing of the matter inquired of herein.

To the second additional interrogatory, he answers, that he does not know the qualities of teas referred to in the interrogatory. He knows of the sales of the cargo of the ship Washington, made by Haggerty, Austin, & Co., on the 3d May, 1826, of which firm he was a partner. The cargo of the said ship Washington was of the average quality of teas imported into New York. Witness produces the account of sales of the said cargo, so made by him as aforesaid, which is hereto annexed, marked 215, which contains a true account and statement of the prices which the teas therein mentioned produced at such sale. The said sale was made according to the usual course of such business and sales in the city of New York; that the said sale was as well attended by "*the trade*" as sales of teas generally are.

To the third additional interrogatory, witness says, that the firm to which he belongs as aforesaid, sold a portion of the teas the interrogatory referred to; he does not recollect the particulars of said sales.

To the fourth additional interrogatory, witness knows nothing further.

To the last interrogatory, witness says, he knows nothing further than he has above stated.

WM. E. WILMERDING.

William McNeal, a witness produced, sworn, and examined on the part of the plaintiffs, declares as follows:

To the first interrogatory, he answers, that he knows the plaintiffs named in the title to the interrogatories, but does not know the defendant.

To the second interrogatory, he answers, that Oliver G. Kane was secretary of the National Insurance Company, at the time of the transactions referred to in this interrogatory; that shortly after the death of the said O. G. Kane, which happened about the third of January, 1828, witness was appointed secretary of that company; that all the knowledge witness has of the sales of teas and other merchandise, referred to in this interrogatory, is derived from accounts of sales, invoices, and bills of lading of teas by the Addison and Superior, belonging to the said company, which witness found in the office of the said company at the time of his appointment. Witness refers to accounts of sales and copies of bills of lading and invoices, which are hereto annexed, marked Nos. 208, 209, 19, 20, 21, 22.

To the third interrogatory, he cannot answer further than he has already stated.

To the first additional interrogatory, he answers, that he did not act as such agent, and knows nothing of the matters inquired of herein.

To the second additional interrogatory, he knows nothing.

To the third additional interrogatory, he answers, that he cannot state further than he has already stated.

To the fourth additional interrogatory, witness, in answer to this interrogatory, refers to the statements now produced by him, and which are hereunto annexed, marked No. 216, 217, which were drawn by witness from the books of said National Insurance Company, kept by the said Oliver G. Kane, and which books are in the handwriting of said O. G. Kane, with which witness is acquainted. Said statements contain true accounts of costs and expenses incurred and paid by said company, on account of the said teas belonging to the National Insurance Company. The items in said statement,

marked with the letter P, were incurred and paid prior to the delivery of the said teas by the government, and the residue afterwards. The matters above stated by witness, are according to the best of his knowledge and belief, and are derived from the books and vouchers of the said company. Witness produces several vouchers of payments contained in the said statements, and which are hereto annexed, marked No. 218 to 236, inclusive.

To the last interrogatory, witness says, that he knows nothing further than he has before stated.

WM. McNEAL.